

DRAFT AIA® Document B101™ - 2007

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the _____ day of _____ in the year _____
(In words, indicate day, month and year)

BETWEEN the Architect's client identified as the Owner:
(Name, address and other information)

CITY OF FRISCO, TEXAS
(see address for notice purposes in Exhibit B)

and the Architect:
(Name, address and other information)

«To be determined.» « »
(see address for notice purposes in Exhibit B)

for the following Project:
(Name, location and detailed description)

STADIUM TRACT FACILITIES

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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EXHIBIT A INITIAL INFORMATION

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the information set forth in Sections 1.1 through 1.2 of this Article 1 or in such documents or Exhibits referenced in this Article 1, including the Project Description attached hereto as Exhibit A and incorporated fully herein, hereinafter referred to collectively as the "Initial Information".

§ 1.2 The Owner's anticipated dates for commencement of construction and Substantial Completion of the Work are as set forth in the Project Description attached hereto as Exhibit A.

§ 1.3 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services and the Architect's compensation.

§ 1.4 The Initial Information, together with such material changes subsequently made by the Owner and furnished to the Architect, and such other information with regard to the Owner's requirements for the Project subsequently furnished by the Owner to the Architect shall constitute the **Owner's Program**.

§ 1.5 Owner has retained the services of Blue Star Stadium, Inc. ("Blue Star") as a consultant in connection with the design and construction of the Project. Blue Star also has certain rights arising under this Agreement as further described herein.

§ 1.5.1 Architect shall deliver to Blue Star accurate, complete copies of all notices or written communications given by the Architect to the Owner, including but not limited to all such notices or communications required to be given by the Agreement, prior to or simultaneously with the delivery to the Owner. Notice provisions in the Agreement that are silent with regard to notice to Blue Star shall not be construed to mean that notice is not required to be given to Blue Star, even though specific provisions expressly require notice to Blue Star. No notice required to be

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provided to the Owner under the Agreement shall be effective until and unless also delivered to Blue Star. All meetings, conferences, and consultations between Owner and Architect shall include Blue Star.

§ 1.5.2 It is further understood and agreed that, because of the contractual obligations of Owner and Blue Star relating to the improvements to be constructed hereunder and the financing for construction arising under that certain Master Development Agreement for Dallas Cowboys Facilities and Related Improvements, Blue Star shall be a third-party beneficiary of this Agreement. Architect acknowledges and agrees that, notwithstanding the third party beneficiary rights of Blue Star arising under this Agreement, Architect is not contracting with Blue Star with regard to the professional services hereunder and that Architect shall have no contractual cause of action against Blue Star arising from this Agreement, except as may otherwise be expressly agreed, in writing, between the Architect and Blue Star.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The services performed by the Architect, Architect's employees and Architect's consultants shall be as enumerated in Articles 2, 3 and 12 and the Architect's Supplemental Scope of Services Statement, if any, attached hereto as Exhibit C. Architect agrees and represents that it shall perform such services required hereunder in accordance with the terms of this Agreement and, in connection therewith, shall render its professional opinions and advice and exercise its professional judgment commensurate with the applicable standards of care and practice for licensed architects performing similar services on projects of like size, scope and complexity located in the metropolitan area and county where the Project is located (the "Standard of Care"). If changes in the schedule or scope of work are requested by the Owner or required as a result of circumstances beyond the control of the Owner that would require the Architect to perform with a lesser standard of care, it is solely the responsibility of the Architect to notify the Owner in advance in writing that such deviation will be required and to provide to the Owner the specific basis for that opinion. The Architect shall not deviate to a lesser standard of care in the absence of an express written authorization by the Owner. This paragraph shall not be construed to authorize performance by the Architect at a standard of care that is less than that which is required by law or which is expected of Architects practicing under similar circumstances and conditions.

§ 2.2 The Architect shall perform its services as expeditiously as is consistent with the Standard of Care and the orderly progress of the Project and consistent with the time parameters as set forth in this Agreement (including but not limited to Exhibit C).

§ 2.2.1 Architect's services shall be coordinated with those of other design professionals or consultants, if any, retained by the Owner for the Project and identified in writing to the Architect in order to avoid unreasonable delay in the orderly and sequential progress of the Project and the services of the Architect and such other design professionals or consultants.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project. Such representative shall not be changed except upon written notice furnished to Owner.

§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.5 The Architect shall maintain the insurance coverages for the duration of this Agreement as required in the Insurance Requirements attached hereto as Exhibit D and incorporated fully herein.

§ 2.6 Architect shall be responsible for the completeness and accuracy of all drawings and specifications submitted by or through Architect and for their compliance with all applicable codes, ordinances, regulations, laws, and statutes (such requirements being referred to herein collectively as "Applicable Law") and shall make such revisions and modifications to such plans, and drawings as may be necessary to comply with the permitting and other regulatory and legal requirements of the jurisdiction of the Project. Architect shall take such action with reasonable promptness as to cause no delay in the Project or in the activities of the Owner, the Contractor or other contractors of the Owner. All documents shall bear all indicators of completeness of the work (such as professional seals) required by the Texas Board of Architectural Examiners and/or the Texas Engineering Practice Act, as applicable. The Architect is required to design to the most stringent prevailing code having jurisdiction over the project.

§ 2.7 Architect shall upon request certify to Owner and any lender that, in the Architect's professional opinion, all drawings and specifications prepared by or through the Architect conform to Applicable Law, including all applicable governmental regulations, statutes, rules and ordinances, and that to the best of its knowledge the Project when completed (if built in accordance with the Construction Documents) will be in accordance therewith. Architect expressly agrees to produce any available documentation, or otherwise reasonably satisfy the requirements of any public agency, quasi-public agency, regulatory agency, financing entity or other party with jurisdiction over the Project or its financing to establish such compliance.

§ 2.8 Architect has submitted and Owner has approved a project organizational chart identifying all of Architect's personnel who will be performing services related to this Project and their responsibilities in connection with this Project. If at any time after entering into this Agreement, Owner has any reasonable objection to any such person or entity, Architect shall promptly propose substitutes to whom the Owner has no reasonable objection. Except upon the request of the Owner, the Architect shall retain each person approved by the Owner in his (or her) respective position for the duration of the Project. Should circumstances beyond the control of the Architect result in changes to Architect's personnel, the Architect shall submit the credentials of Architect's proposed replacement team member for the Owner's approval, which shall not be unreasonably withheld. The services provided by the Architect are deemed to be personal services. Termination by the Owner as a result of an unapproved change in the project team shall be deemed a termination for cause.

§ 2.9 All consultants retained by the Architect not previously approved by the Owner are subject to the Owner's approval on the basis of qualifications and personnel committed to the Project which approval shall not be unreasonably withheld. In addition, all substitutions of consultants by the Architect are subject to the Owner's approval, which approval shall not be unreasonably withheld.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in Article 3 and in the Architect's Supplemental Scope of Services Statement attached hereto as Exhibit C and include usual and customary structural, mechanical, and electrical engineering services, as well as any other services that are customarily or necessarily implied in order to complete the work that is described in the this Agreement and any attachments hereto. Services not set forth or required in this Article 3 are Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants, provided such reliance is reasonable. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include adequate allowances for periods of time required for the Owner's and Contractor's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution which constitutes a material change to the requirements of the Construction Documents prepared by the Architect and which are made without the Architect's knowledge. If a change or substitution is proposed by the Owner or the Contractor and the Architect has an objection to such change or substitution, the Architect shall expressly object in writing to such proposed change or substitution, setting forth the specific basis of its objections to such proposed change or substitution. If the Owner then directs the Architect to incorporate such proposed change or substitution into the Construction Documents or directs or otherwise authorizes the Contractor to perform such change or substitution without a

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revision in the Construction Documents over the Architect's objection, the Owner agrees to accept these risks, and the costs and consequences associated with them.

§ 3.1.5 The Architect shall, at such times required by Applicable Law and with prior notice to Owner, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.1.7 The Architect shall recommend to the Owner all appropriate investigations, surveys, tests, analyses and reports to be obtained as may be necessary for the proper execution of Architect's services.

§ 3.2 SCHEMATIC DESIGN PHASE SERVICES

§ 3.2.1 The Architect shall review the Owner's Program and other information furnished by the Owner, and shall review Applicable Law relating or applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's Program, schedule, budget for the Cost of the Work, Project site, and the proposed procurement or delivery method and other information concerning the Project furnished by Owner, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project's requirements agreed upon with the Owner, the Architect shall prepare and present for the Owner's approval a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's Program, schedule and budget for the Cost of the Work. The Owner may obtain other environmentally responsible design services under Article 4.

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics in developing a design for the Project that is consistent with the Owner's Program, schedule and budget for the Cost of the Work.

§ 3.2.6 If identified as a Basic Service in the Architect's Supplemental Scope of Services Statement, if any, attached hereto as Exhibit C, the Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

§ 3.3 DESIGN DEVELOPMENT PHASE SERVICES

§ 3.3.1 Based on the Owner's written approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect

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shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

§ 3.3.2 If identified as a Basic Service in the Architect's Supplemental Scope of Services Statement, if any, attached hereto as Exhibit C, the Architect shall update the estimate of the Cost of the Work.

§ 3.3.3 The Architect shall submit the Design Development documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work (if Cost estimating is identified as a Basic Service in the Architect's Supplemental Scope of Services Statement, if any, attached hereto as Exhibit C), and request the Owner's approval.

§ 3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES

§ 3.4.1 Based on the Owner's written approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct the Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project. Without limiting the foregoing, Construction Drawings and specifications submitted by the Architect to Owner for approval shall be sufficiently complete and unambiguous and in compliance with all Applicable Law, except to the extent expressly and specifically otherwise stated in detail in writing by Architect at the time of such submission.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms; and (2) any Supplementary Conditions of the Contract for Construction as expressly authorized in writing by the Owner. The Architect shall also compile a project manual that includes the General Conditions of the Contract for Construction as furnished by the Owner and Specifications prepared by the Architect consistent with the General Conditions of the Contract for Construction as furnished by the Owner.

§ 3.4.4 If identified as a Basic Service in the Architect's Supplemental Scope of Services Statement, if any, attached hereto as Exhibit C, the Architect shall update the estimate for the Cost of the Work.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work (if Cost estimating is identified as a Basic Service in the Architect's Supplemental Scope of Services Statement, if any, attached hereto as Exhibit C), take any action required under Section 6.5, and request the Owner's approval.

§ 3.5 COMPETITIVE PROCUREMENT PHASE SERVICES

§ 3.5.1 Owner currently intends to select a general contractor or construction manager at risk (referred to herein as the "Contractor" whether a general contractor or construction manager at risk) for certain preconstruction services, as well as construction services, by means of competitive selection in compliance with Applicable Law. The selection and retention of the Contractor will likely occur prior to commencement of the Construction Documents Phase.

§ 3.5.2 Bidding or Competitive Procurement Documents shall consist of bidding / proposal requirements and proposed Contract Documents. Upon Owner's request and as a Basic Service, the Architect shall assist the Owner in selecting the Contractor or Construction Manager for the Project pursuant to applicable competitive procurement requirements by:

- .1 assisting the Owner in the preparation of Bidding or Competitive Procurement Documents for distribution to prospective bidders or proposers;
- .2 distributing the Bidding or Competitive Procurement Documents to prospective bidders or proposers, requesting their return upon completion of the competitive selection process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective bidders or proposers;
- .3 organizing and conducting a pre-bid conference for prospective bidders or proposers;
- .4 assisting in the preparation of responses to questions from prospective bidders or proposers and providing clarifications and interpretations of the Bidding or Competitive Procurement Documents to all prospective bidders or proposers in the form of addenda;
- .5 assisting the Owner in organizing and conducting the opening of the bids or responses to competitive proposals, and subsequently documenting and distributing the bidding or competitive selection results, as directed by the Owner;
- .6 organizing and participating in selection interviews with prospective contractors submitting proposals; and
- .7 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

§ 3.5.3 The Architect shall consider, as Basic Services, reasonable requests for substitutions, if the Bidding or Competitive Procurement Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders or proposers.

§ 3.5.4 Further, once Contractor has been retained by the Owner, the Architect shall cooperate with the Contractor in connection with the Contractor's performance of its services to the Owner, shall be responsive to any requests from the Contractor for information to which Contractor is entitled under the Contract Documents, and shall timely furnish all information relating to the Project or the Construction Documents prepared by the Architect as authorized or directed by the Owner.

§ 3.6 CONSTRUCTION PHASE SERVICES

§ 3.6.1 GENERAL

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in the Owner's standard form of the AIA Document A201™-2007, General Conditions of the Contract for Construction, a copy of which is attached hereto for reference purposes as **Exhibit G**. If the Owner and Contractor modify AIA Document A201-2007 as attached hereto, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall not have authority to act on behalf of the Owner except to the extent expressly provided in this Agreement or as expressly authorized in writing by Owner. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.3, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

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§ 3.6.2 EVALUATIONS OF THE WORK

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.3.3 or the Architect's Supplemental Scope of Services Statement attached hereto as Exhibit C, to become generally familiar with the progress and quality of the portion of the Work completed, to endeavor to guard the Owner against defects and deficiencies in the Work, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. The Architect shall provide Owner with written reports of such reviews. However, except as otherwise agreed in the Architect's Supplemental Scope of Services Statement, if any, attached hereto as Exhibit C, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work or to recommend to the Owner to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to recommend to the Owner to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of the Owner. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect which are required by the Owner or the Contract Documents shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings.

§ 3.6.2.5 [Intentionally deleted.]

§ 3.6.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR

§ 3.6.3.1 Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 3.6.4 SUBMITTALS

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval. The Architect shall be responsible for determining what aspects of the Work shall be the subject of shop drawings and submittals and for timely communicating such requirements to Owner and Contractor. The

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Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review.

§ 3.6.4.2 In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review shop drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to the provisions of Section 4.3, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

§ 3.6.5 CHANGES IN THE WORK

§ 3.6.5.1 Upon the Owner's request, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work. Unless expressly excluded as Basic Services by the Architect's Supplemental Scope of Services Statement, if any, attached hereto as Exhibit C, the Architect shall prepare reproducible record drawings showing significant changes in the work made during construction based on marked-up drawings and other data furnished by the Owner to the Architect and on issued Addenda, Change Orders, and Construction Change Directives.

§ 3.6.6 PROJECT COMPLETION

§ 3.6.6.1 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

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§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance and make recommendations regarding any warranty work or any other work needed in order to correct non-conforming work.

ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services are those services not included in Basic Services but may be required for the Project and, except as otherwise expressly provided below, authorized in writing by the Owner. The Architect shall provide such Additional Services only as expressly provided below or as authorized in writing by the Owner, and the Owner shall compensate the Architect as provided in Section 11.2.

§ 4.2 Additional Services anticipated by the Owner (and subject to the express written authorization by the Owner) are as set out below or as expressly identified as Additional Services in the Architect's Supplemental Scope of Services Statement, if any, attached hereto as Exhibit C.

None, except as provided in Exhibit C.

§ 4.3 Additional Services may be provided after execution of this Agreement and as authorized in writing by the Owner, without invalidating the Agreement. Except for services required due, in whole or in part, to the fault of the Architect or its sub-consultants, any Additional Services provided in accordance with this Section 4.3 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.3.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner in writing with reasonable promptness which notice shall include an explanation of the facts and circumstances giving rise to the need and shall state whether Architect will be charging for such Additional Services and, if so, shall include a reasonably accurate estimated cost to perform such Additional Services. Except to the extent such services are required hereunder as Basic Services, the Architect shall not proceed to provide the following services until the Architect receives the Owner's written authorization:

1. Services in excess of Basic Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
2. Services in excess of Basic Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;
3. Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;
4. Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors; provided, however, that no decision shall be considered untimely unless the Owner fails to comply with the schedule, if any, agreed by the parties or the Architect notifies the Owner in writing (or in a documented Project meeting in which the Owner is present) of a specific need for a particular decision by a specified date reasonably in advance of that date and such time period is reasonable based upon all circumstances;
5. Preparation for, and attendance at, a public presentation, meeting or hearing;
6. Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
7. Consultation concerning replacement of Work resulting from fire or other cause during construction.

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§ 4.3.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services and shall notify the Owner in writing of the Additional Services to be performed with reasonable promptness prior to the performance of such Additional Services. Such notice shall state whether Architect will be charging for such Additional Services and, if so, shall include a reasonably accurate estimated cost to perform such Additional Services, and shall explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect, and the Owner shall have no further obligation to compensate the Architect for those services:

- .1 Reviewing a Contractor's submittal out of sequence from the submittal schedule agreed to by the Architect;
- .2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a reasonably careful study (based upon the Contractor's standard of care as required under the Contract Documents) and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing an excessive number of Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;
- .4 Evaluating an excessive number of substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or
- .5 To the extent the Architect's Basic Services are affected, providing Construction Phase Services 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion identified in Initial Information, whichever is earlier.

§ 4.3.3 [Intentionally deleted.]

§ 4.3.4 If the services covered by this Agreement have not been completed within () months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement and upon the Architect's timely written request, the Owner shall provide in a timely manner such supplemental information to the Owner's Program regarding requirements for and limitations on the Project as reasonably required for the Architect to perform its obligations hereunder.

§ 5.2 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.4 The Owner shall furnish, upon timely written request of the Architect, surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.5 The Owner shall furnish, upon timely written request of the Architect, services of geotechnical engineers when such services are reasonably required by the Architect. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.6 The Owner shall coordinate the services of its own consultants, if any, with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants maintain professional liability insurance as appropriate to the services provided.

§ 5.7 Upon Architect's timely written notice to Owner of the need for Owner to arrange for tests, inspections and reports required by law or the Contract Documents, Owner shall furnish or cause to be furnished such tests, inspections, and reports, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.8 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.9 The Owner shall provide prompt written notice to the Architect if the Owner has actual knowledge of any material fault or defect in the Project, including material errors, omissions or inconsistencies in the Architect's Instruments of Service. This, however, shall not impose an independent duty on the Owner to review the accuracy or completeness of the Architect's Instruments of Service.

§ 5.10 The Owner shall promptly notify the Architect of any communications with the Contractor that may affect the Architect's services.

§ 5.11 Upon the Architect's request, the Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

§ 5.12 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

§ 5.13 Owner hereby reserves the right to perform reviews, inspections, and acceptance of the Work and any and all reviews, inspections and acceptance performed by the Owner or by others for the Owner shall be for the sole benefit of the Owner. The presence or absence of an Owner representative or inspector does not relieve the Architect from any contract requirement, nor is the representative or inspector authorized to change any term or condition of the drawings and specification without the Owner's written authorization.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Except as may otherwise be provided by the Architect's Supplemental Scope of Services Statement, if any, attached hereto as Exhibit C, any review of the Owner's budget for the Cost of the Work, the preliminary estimate of the Cost of the Work, and updated estimates of the Cost of the Work prepared by the Owner is solely for the Architect's guidance in the Architect's preparation of the Construction Documents. Accordingly, unless otherwise provided by the Architect's Supplemental Scope of Services Statement, if any, attached hereto as Exhibit C, the Architect cannot and does not warrant or represent

that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work or from any estimate of the Cost of the Work or evaluation prepared or agreed to by the Architect.

§ 6.3 In preparing estimates of the Cost of Work (if such Cost estimating is required hereunder), the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the program and scope of the Project; and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requests cost estimating services not required as a Basic Service, the Architect shall provide such services as an Additional Service under Article 4.

§ 6.4 If the Bidding or Negotiation Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, through no fault of the Architect, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the Cost of the Work.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect, without additional compensation, shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 Drawings, specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are Instruments of Service (hereinafter referred to as "Instruments of Service") and all rights therein shall be governed by and subject to the terms set forth in Exhibit F (Instruments of Service: Conveyance of Rights to Owner) attached hereto and incorporated fully herein.

§ 7.2 The Architect and the Owner agree that in transmitting Instruments of Service, or any other information, the transmitting party or the party to whom the transmission is directed is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§ 7.2 [Intentionally deleted. See Exhibit F attached hereto and incorporated fully herein.]

§ 7.3 [Intentionally deleted. See Exhibit F attached hereto and incorporated fully herein.]

§ 7.3.1 [Intentionally deleted. See Exhibit F attached hereto and incorporated fully herein.]

§ 7.4 [Intentionally deleted. See Exhibit F attached hereto and incorporated fully herein.]

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 GENERAL

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by Applicable Law. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1. Notwithstanding the foregoing, causes of action by the Owner against the Architect pertaining to acts or failures to act in connection with the professional services rendered or to be rendered hereunder shall be deemed to have accrued and the applicable statute of limitations shall commence to run either on the date of Substantial Completion for acts or failures to act occurring prior to Substantial Completion of which the Owner was aware as a result of notice by the Architect, or upon the Owner's discovery of damages to the Owner or the Project resulting from the act or failure to act by the Architect, whichever is later.

§ 8.1.2 To the extent damages are covered by property insurance during construction, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, but only to the extent of the actual recovery of the proceeds of such insurance. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 *[Intentionally deleted.]*

§ 8.2 MEDIATION

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as provided herein.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement or as otherwise agreed by the parties. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the Dallas-Fort Worth metropolitan area, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.3 BINDING DISPUTE RESOLUTION

§ 8.3.1 If the parties do not resolve a dispute through mediation pursuant to Section 8.2, the method of binding dispute resolution shall be the following: litigation in a state District Court located in the County in which the Project is located or in a United States District Court of the Northern District of Texas.

§ 8.3.2 The provisions regarding dispute resolution shall survive completion and termination of the Contract.

§ 8.3.3 Any consolidation or joinder of litigation arising out of this Agreement shall be subject to the applicable rules of procedure in the respective court with regard to consolidation and joinder.

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner after the Owner's material default before suspending services provided the Owner has not substantially cured such default. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Upon Owner's cure of such default, Architect shall promptly

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resume the performance of its services; provided, however, before resuming services, the Architect shall be paid all sums due prior to suspension and any reasonable and directly related actual expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted consistent with the provisions for the compensation of the Architect under this Agreement.

§ 9.2 If the Owner suspends the Project for more than 30 consecutive days for reasons other than the fault of the Architect, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted consistent with the provisions for the compensation of the Architect under this Agreement.

§ 9.3 If the Owner suspends the Project for more than 120 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 In the event of termination for any reason (other than the fault of the Architect), the Architect's sole recovery from the Owner shall be compensation as authorized by this Agreement for services performed prior to termination, together with Reimbursable Expenses then due, including actual, direct expenses reasonably and necessarily incurred by the Architect in connection with the termination of the Agreement. In the event of a termination by the Owner for cause (as a result of the breach of the Agreement by the Architect), the Architect's compensation shall not exceed the compensation authorized by this Agreement for services performed prior to termination, together with Reimbursable Expenses incurred in the performance of those services, less any offsets or deductions for any damage or loss incurred by Owner for which the Architect is responsible under the terms of this Agreement or Applicable Law.

§ 9.7 [Intentionally deleted.]

§ 9.8 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 11.9.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located and the terms of this Agreement shall be interpreted to comply with the laws of such jurisdiction. This Agreement is fully performable in the county in which the Project is located and venue for all suits arising from this Agreement or the Project shall be such county.

§ 10.2 Except as otherwise expressly provided in this Agreement, terms in this Agreement shall have the same meaning as those in the Owner's Standard Form of AIA Document A201-2007, General Conditions of the Contract for Construction (see Exhibit I).

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. The Architect shall not assign this Agreement, not any monies due or to become due to it hereunder without the prior written consent of the Owner. Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. Owner may also assign this Agreement and/or the rights arising hereunder to any specially created entity owned or controlled by the Owner, provided such entity is or becomes the owner of the property for which the services are to be provided pursuant to this Agreement, or to Blue Star. Owner may assign this Agreement to any other entity upon Architect's written consent, such consent not to be unreasonably withheld. In the event of the Owner's assignment of this Agreement or any rights thereunder, Architect shall execute all consents reasonably required to facilitate such assignment.

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§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement. However, the Owner may require and the Architect shall execute, as part of its Basic Services hereunder, any certificates or certifications customarily, commonly, or reasonably required on projects of this type.

§ 10.5 Architect acknowledges that it is acting as an independent contractor, that it is solely responsible for its actions or inactions and that no document, action or assertion shall be construed to create an employment or agency relationship between Owner and Architect. Architect is not authorized to enter into contracts or agreements on behalf of Owner or to otherwise create obligations of Owner to third parties. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site -- except to the extent that such hazardous substances were introduced to the Project site by Architect or as a part of or derived or resulting from materials or other items specified by the Architect's Plans, Drawings, Specifications, or other documents (in which case the Architect shall have such responsibility).

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary.

§ 10.8 The Architect shall maintain the confidentiality of information specifically designated as confidential by the Owner, unless withholding such information would violate the law, create the risk of significant harm to the public or prevent the Architect from establishing a claim or defense in an adjudicatory proceeding. The Architect shall require of the Architect's consultants similar agreements to maintain the confidentiality of information specifically designated as confidential by the Owner.

§ 10.9 Architect is solely responsible for the work, direction and compensation of its consultants, employees or any other party Architect shall retain or be legally responsible for; and neither Owner, Owner's Representative nor Owner's Consultants will incur any liability by virtue of any act, omission, negligence or obligation of Architect, consultant or any other party for whom Architect shall be legally responsible.

§ 10.10 If any action at law or in equity, including an arbitration proceeding, is necessary to enforce or interpret the terms of this Agreement or to recover damages for breach of contract or negligence arising out of or in connection with the performance of the services hereunder, the Court or the arbitrator(s), as applicable, shall determine the prevailing party and award to such prevailing party, in addition to any other relief to which such party is entitled to recover, its reasonable attorneys' fees, expert witness fees, costs, and other reasonable expenses incurred in such proceeding.

§ 10.11 To the fullest extent permitted by law (and no further), the Architect hereby indemnifies and holds harmless Owner, Owner's construction lender(s) (if any) providing financing for the Project, and Blue Star, and their directors, officers, parents, subsidiaries, affiliates, joint venturers, partners, employees, agents and representatives (hereinafter referred to individually as an "Indemnified Party" and collectively as the "Indemnified Parties") from and against all claims, damages, liabilities, losses and expenses, including but not limited to reasonable attorney's fees and costs incurred by Owner and/or the other Indemnified Parties in the defense of claims or the enforcement of the Architect's indemnity obligations hereunder, to the extent caused by:

- a the violation of any ordinance, regulation, statute, or other legal requirement by Architect or any of its Subconsultants, or any of their agents and employees, as to the performance of the Agreement;

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- .b any negligent act or omission or any intentional act or omission in violation of Architect's standard of care, by the Architect, a sub-consultant or anyone directly or indirectly employed by the Architect or anyone for whose acts the Architect may be liable; or
- .c the performance of the services under this Agreement, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, including loss of use resulting therefrom.

§ 10.11.1 With regard to the indemnity obligations arising under Section 10.11, such obligations shall arise regardless of whether or not such claim, damage, loss or expense is caused in part by the concurrent or partial negligence of an Indemnified Party; however, Architect shall not be liable to the Owner or another Indemnified Party for that portion of any damages, losses, or expenses incurred by the Indemnified Parties to the extent of their negligence or the negligence of their employees, agents, or contractors (or their subcontractors of any tier).

§ 10.11.2 Notwithstanding the foregoing, Architect's obligation to indemnify the Indemnified Parties for attorney's fees and costs shall extend to those reasonable attorney's fees and costs incurred by the Indemnified Parties in the defense of claims asserted against the Indemnified Parties which arise from the alleged acts or omissions described in Section 10.11 .a through .c above. However, in the event that the Owner or any other Indemnified Party is found, by final judgment or arbitration award, to be negligent or at fault in whole or in part, the indemnity and hold harmless obligation of the Architect with regard to attorney's fees and litigation or arbitration costs and expenses incurred by such Indemnified Party in defense of such claim shall be reduced by the percentage of negligence or fault of the Indemnified Party and/or their agents or employees.

§ 10.11.3 The indemnification obligations assumed under this Section 10.11 shall not be limited by a limitation on the amount or type of damages which might otherwise be recoverable by Owner against the Architect.

§ 10.11.4 The Architect's indemnity and defense obligations shall survive the termination of this Agreement and completion of the services required hereunder.

§ 10.12 The following documents are attached hereto and, except for Exhibit I, are incorporated fully herein:

- Exhibit A: Project Description
- Exhibit B: List of Designated Representatives and Contact Persons
- Exhibit C: Architect's Supplemental Scope of Services Statement
- Exhibit D: Insurance Requirements
- Exhibit E: Payment Terms and Invoicing Requirements
- Exhibit F: Instruments of Service: Conveyance of Rights to Owner
- Exhibit G: Owner's Standard Form of General Conditions (AIA A201) (attached for reference purposes)

§ 10.13 This Agreement shall not be amended except by written agreement of the parties, duly executed by an authorized representative of each party.

§ 10.14 To the fullest extent permitted by law, Architect or any person or entity acting through Architect hereby waives and releases any right to file, perfect or enforce a mechanic's lien against the Project or the real property upon which the Project is located for services performed under this Agreement. Architect shall, upon request, deliver to Owner contemporaneously with any payment to Architect, recordable partial waivers of lien for any partial payments and a recordable final waiver of lien for the final payment.

§ 10.15 All notices shall be in writing and shall be delivered personally, by Federal Express, or by registered or certified mail return receipt requested. Notices to the respective parties shall be delivered as follows:

See Exhibit B attached hereto and incorporated fully herein.

Notice shall be effective on the date of delivery, or if delivery is refused, on the date of attempted delivery. Either party may change its address for notice by notifying the other party in accordance with this Section.

§ 10.16 No term or condition of this Agreement may be waived at any time by the party or parties entitled to the benefit thereof except in a writing signed by such party and specifically addressing such waiver. No waiver of any default or breach hereunder shall be construed as a waiver of any subsequent breach.

§ 10.17 In the event any provision of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement and the application of such provisions to persons or situations hereunder shall not be affected and shall continue to be valid and enforceable to the fullest extent permitted by law.

§ 10.18 **CERTIFICATE OF MERIT / TEXAS PROJECTS:** For purposes of the Owner submitting a dispute or claim to litigation or arbitration, the Architect expressly waives the requirement under Chapter 150, Texas Civil Practices & Remedies Code, that Owner file a Certificate of Merit with the pleading initiating an action against the Architect based upon an alleged negligent act or omission.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

See Payment Terms and Invoicing Requirements attached hereto as Exhibit E and incorporated fully herein.

§ 11.2 For Additional Services designated in Section 4.1, the Owner shall compensate the Architect as follows:

See Payment Terms and Invoicing Requirements attached hereto as Exhibit E and incorporated fully herein.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Architect as follows:

Hourly fees as set forth in the Payment Terms and Invoicing Requirements attached hereto as Exhibit E or as otherwise agreed with Owner in writing, subject to any maximum amount set forth in Owner's authorization to perform such services. Hourly fees for Additional Services performed by subconsultants shall not exceed those hourly fees approved by Owner.

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect, or as otherwise stated below:

See Payment Terms and Invoicing Requirements attached hereto as Exhibit E and incorporated fully herein.

§ 11.5 Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows:

See Payment Terms and Invoicing Requirements attached hereto as Exhibit E and incorporated fully herein.

§ 11.6 *[Intentionally deleted.]*

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.

See Payment Terms and Invoicing Requirements attached hereto as Exhibit E and incorporated fully herein.

§ 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

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See Payment Terms and Invoicing Requirements attached hereto as Exhibit E and incorporated fully herein.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants.

§ 11.9 COMPENSATION FOR USE OF ARCHITECT'S INSTRUMENTS OF SERVICE
[Intentionally deleted.]

§ 11.10 PAYMENTS TO THE ARCHITECT

§ 11.10.1 An initial payment shall not be required.

§ 11.10.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. All invoices shall be submitted in such form and subject to such requirements as set forth in Payment Terms and Invoicing Requirements attached hereto as Exhibit E and incorporated fully herein.

§ 11.10.3 Should Owner be damaged by Architect's breach of contract or an error or negligent omission which constitutes a breach of Architect's applicable Standard of Care, Owner may, without waiving any other legal or equitable right, withhold from Architect's compensation an amount commensurate with Owner's damages suffered as a result of Architect's breach of contract or error or negligent omission.

§ 11.10.4 Architect shall maintain, and shall require its consultants to maintain complete and accurate records (in accordance with generally accepted accounting principles consistently applied and maintained) of costs and expenses incurred by it and the hours worked on a time-card basis by their respective personnel. Upon reasonable notice from Owner or Owner's Representative, these records shall be available at Architect's or the respective consultant's office during business hours for audit and copying by Owner at Owner's expense. Architect shall retain these records for six years after its receipt of final payment.

§ 11.10.5 The Architect shall provide payment to each sub-consultant and supplier within ten (10) calendar days after receiving payment from the Owner for amounts previously invoiced for services performed or materials furnished under this Agreement. All subcontract or sub-consulting agreements shall contain payment provisions requiring payments to lower-tier subcontractors or sub-consultants within ten (10) calendar days after the first-tier subcontractor or sub-consultant receives payment from the Architect. Interest on late payments is subject to the provisions of the Chapter 2251, Texas Government Code, regarding payments to subcontractors.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

Note: Statement of Jurisdiction. The Texas Board of Architectural Examiners (TBAE) has jurisdiction over complaints regarding the professional practice of persons registered as architects in Texas. For more information, contact TBAE at P. O. Box 12337, Austin, Texas 78711-2337, (512) 305-9000, or visit their website at www.tbac.state.tx.us.

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents listed below:

1. AIA Document B101™-2007, Standard Form Agreement Between Owner and Architect, as modified herein, with the Exhibits attached hereto.
2. Other documents:
none.

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This Agreement entered into as of the day and year first written above.

OWNER

ARCHITECT

(Signature)

(Signature)

(Printed name and title)

(Printed name and title)

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**EXHIBITS TO
AGREEMENT [AIA / B101]
BETWEEN
CITY OF FRISCO, TEXAS
[OWNER]
and**

[ARCHITECT]

Project: STADIUM TRACT FACILITIES

OWNER/ARCHITECT AGREEMENT

EXHIBIT A

Project Description

[See Attached]

OWNER/ARCHITECT AGREEMENT

EXHIBIT B

List of Designated Representatives and Contact Persons

Owner's Designated Representative:

An additional Owner's Designated Representative may be added and the Owner's Designated Representative may be changed, effective only upon written notice to the Architect executed by _____.

Without limiting any other provisions of the Contract Documents, all notices of claims by Architect or its subconsultants (of any tier) against the Owner, notices of default on the part of the Owner, notices demanding action or requiring cure by the Owner, or notices of termination or required as a condition of termination shall not be effective until and unless received by Owner's Designated Representative, with a copy contemporaneously sent to and received by the following:

No waiver, consent or modification of the terms of the Agreement or Architect's obligations to perform thereunder or any other approval shall be effective or enforceable against Owner except to the extent such waiver, consent, modification or approval is in writing and duly executed by Owner's Designated Representative.

Blue Star's Designated Representative:

Except as otherwise directed in writing by Owner, Architect shall furnish to Blue Star copies of all notices and written communications by or through Architect to Owner, contemporaneously with such notice to Owner. Architect shall cooperate fully with Blue Star with regard to the services it has been retained to furnish to Owner and shall provide Blue Star the same level of access to such information in the possession of Architect in connection with the Agreement or the Project to which Owner would be entitled under the Agreement or pursuant to Applicable Law. Notices to Blue Star shall be sent to Blue Star's Designated Representative at the address above.

Architect's Designated Representative:

All notices and other written communications to be provided to the Architect under the terms of the Contract shall be sent to the Architect's Designated Representative at the address above.

OWNER/ARCHITECT AGREEMENT

EXHIBIT C

Architect's Supplemental Scope of Services Statement

[See Attached]

**OWNER / ARCHITECT AGREEMENT
EXHIBIT D**

Insurance Requirements

The Architect shall, at his sole expense, maintain in effect at all times during the full term of its services under this Agreement and as otherwise required hereunder, insurance coverages with limits not less than those set forth below with the insurers licensed to do business in the jurisdiction in which the Project is located or otherwise acceptable to the Owner and under forms of policies satisfactory to the Owner. None of the requirements contained herein as to types, limits or Owner's approval of insurance coverage to be maintained by the Architect are intended to and shall not in any manner limit, qualify or quantify the liabilities and obligations assumed by the Architect under this Agreement or otherwise provided by law.

1. **Commercial General Liability ("CGL")** -- Bodily Injury/Property Damage (occurrence basis) - \$1,000,000.00 each occurrence, or equivalent, and \$2,000,000.00 aggregate.

This policy shall be on a form at least as broad as the 2001 edition of Commercial General Liability Coverage Form (CG 00 01 10 01) as published by the Insurance Services Office, Inc., or as otherwise acceptable to the Owner, and shall include the following coverages:

- a. Premises/Operations;
- b. Independent Contractors;
- c. Broad Form Contractual Liability;
- d. Broad Form Property Damage; and
- e. Personal Injury Liability with employees and contractual exclusions removed.

This coverage may be provided through a combination of a primary liability policy with additional excess or umbrella coverage only if (a) the minimum limits for the primary liability policy are not less than \$500,000 for each occurrence, (b) the excess or umbrella provides coverage which is no less broad than the primary liability policy and meets all the other requirements hereunder for the commercial general liability coverage, and (c) the excess or umbrella coverage covers excess liability only for claims or losses otherwise covered by the commercial general liability policy or the comprehensive automobile liability policy (*i.e.*, must include "Follow Form" language).

2. **Comprehensive Automobile Liability ("Automobile Liability")** -- Bodily Injury/Property Damage - \$1,000,000 combined single limit – each accident.

This policy shall be on a standard form (approved by the Texas Department of Insurance) written to cover all owned, hired and non-owned automobiles.

3. **Workers' Compensation and Employer's Liability**

The Architect shall maintain during the term of the Agreement statutory Workers' Compensation Insurance Coverage [as defined in Sec. 402.011(44) of the Texas Labor Code (1995)] for all of Architect's employees or workers at the site of the project. In case any work is sublet, the Architect shall require all of its sub-consultants or agents to provide Workers' Compensation insurance for all the latter's employees unless such employees are covered by the protection afforded by the Architect, or, when applicable, such sub-consultant or agent has complied with the requirements for joint agreements with independent contractors under Sections 406.141 - 406.145, Texas Labor Code (1995). U.S. Longshoreman and Harbor Workers' Compensation coverage shall be provided where such exposure exists. **No "alternative" form of coverage will be accepted under any condition.**

Additionally, Contractor shall maintain during the term of the Work Employers' Liability Coverage as follows:

\$1,000,000	Bodily Injury by Accident -- Each Accident
\$1,000,000	Bodily Injury by Disease -- Each Employee
\$1,000,000	Bodily Injury by Disease -- Policy Limit

4. **Professional Liability Insurance (Claims Basis)**

The Architect agrees to provide and maintain, at its expense, a Professional Liability Insurance Policy with minimum limits as set forth below. The Architect shall maintain the insurance for a period that will cover claims made within three (3) years after the date of the substantial completion of the construction of the Work that is performed in accordance with the services of this Agreement. The Architect will provide the Owner with proof of the terms and conditions of the policy providing Professional Liability coverage reasonably acceptable to the Owner.

Minimum limits: \$10,000,000 – per claim / \$10, 000,000 – aggregate of all claims per annum

- Should the Owner require additional coverage or higher limits of liability, the Owner shall pay for the premium for the excess insurance coverage.

5. **Subconsultants' Insurance**

Insurance similar to that required of the Architect shall be provided by all subconsultants of Architect to cover their operation performed hereunder. However, the minimum limits for such subconsultants shall be \$1,000,000 for CGL (per claim and aggregate) and \$1,000,000 (per claim) and \$2,000,000 aggregate for professional liability, except as otherwise expressly provided in the Agreement (or an Exhibit thereto) or as otherwise agreed in writing by Owner and Architect.

Architect shall maintain Certificates of Insurance from all subconsultants, enumerating, among other things, the Waivers in favor of, and Additional Insured status of, the Owner and the other

Indemnified Parties, as required herein, and make them available to the Owner upon request.

GENERAL REQUIREMENTS (APPLICABLE TO ABOVE)

- A. All insurance coverages required herein must be written with insurance companies licensed and admitted by the applicable state Department of Insurance to provide such insurance coverage in the state in which the respective Project is located. Such coverage must be written on forms of policies reasonably satisfactory to Owner. All such insurers must be reasonably acceptable to Owner and, other than the insurer(s) providing the Workers' Compensation Insurance Coverage, rated no less than A VI or better as shown in the most current issue of A.M. Best's Key Rating Guide.
- B. All deductibles and self-insured retention amounts (except as expressly set forth herein) must be acceptable to the Owner.
- C. Any and all deductibles in the above-described liability insurance policies shall be assumed by, for the account of, and at the sole risk of the Architect.
- D. **Additional Insured.** To the fullest extent permitted by Applicable Law, the CGL and Automobile Liability policies each must name the Owner and ***the other Indemnified Parties identified in the Agreement***, as Additional Insureds using an endorsement form reasonably acceptable to Owner and that provides additional insured coverage to the Owner and the Indemnified Parties for covered claims under the respective policies to the extent of the Architect's indemnity obligations set forth in the Agreement.
- E. **Primary/Non-Contributing Liability.** The CGL and Automobile Liability policies required to be furnished and maintained by Architect shall be primary insurance to any other insurance that may be available to Owner and ***the other Indemnified Parties identified in the Agreement***. It is the intent of the parties to this Agreement that all insurance coverage required herein shall be primary to and shall seek no contribution from all insurance available to Owner and ***such other Indemnified Parties***, with Owner's and ***such other indemnified Parties'*** insurance being excess, secondary, and non-contributing.
- F. **Waivers of Subrogation.** Waivers of Subrogation shall be provided in favor of Owner and ***the other Indemnified Parties identified in the Agreement*** on CGL, Automobile Liability, and Workers' Compensation/Employers policies furnished and maintained by Architect.
- G. **Notice of cancellation or non-renewal.** The CGL and Automobile Liability policies (whether by policy language or endorsement) must provide for thirty (30) days notice of cancellation or non-renewal to Owner. Architect expressly agrees to notify Owner at least thirty (30) days prior to the effective date of any material changes in the coverages required hereunder.
- H. **Proof of Insurance.** Before commencing performance of the Work, the Architect (and those subconsultants as reasonably requested by Owner) must furnish to Owner certificates of insurance for the coverage required hereunder (on such form reasonably acceptable to Owner) or, if requested by Owner, copies of such insurance policies evidencing the terms and conditions required hereunder.

Proof of insurance required hereunder must clearly set forth:

1. Insurance coverage as required herein (including all endorsements setting out coverages).
2. The effective expiration dates of policies.
3. 30 days' prior written notice to the Owner of cancellation or non-renewal of the policy.
4. A waiver of subrogation endorsement in the policies as required herein.
5. Any deductible and/or self-insured retention.
6. Any exclusions to the policy (clearly identifying any endorsements excluding coverages) which are not part of the required standard form of policy.
7. Owner and ***the other Indemnified Parties*** named as Additional Insureds on all liability policies required hereunder by Owner consistent with the requirements set forth herein.

**OWNER / ARCHITECT AGREEMENT
EXHIBIT E**

Payment Terms and Invoicing Requirements

1. Basic Compensation.

Architect's compensation for Basic Services shall be a stipulated sum in the amount of _____ Dollars (\$_____).

Architect's compensation for Basic Services for each phase shall be payable as follows:

Schematic Design Phase:	_____	percent (____%)
Design Development Phase:	_____	percent (____%)
Construction Documents Phase:	_____	percent (____%)
Bidding or Negotiation Phase:	_____	percent (____%)
Construction Phase:	_____	percent (____%)
Total Basic Compensation	One Hundred	percent (100%)

Sub-consultant Fees furnished as Basic Services are included in the stipulated sum for the Basic Services as set forth above, except as follows:

Sub-consultant Fees charged separately from the stipulated sum for Basic Services as identified above shall not be subject to a markup. However, Sub-consultant Fees for Additional Services as approved in accordance with the Owner/Architect Agreement shall be subject to a mark-up of _____ percent (____%).

2. Additional Services Compensation.

Architect's Hourly Fee schedule for Additional Services is as follows:

Position/Job Classification	Hourly Billing Rate
-----------------------------	---------------------

Such Hourly Billing Rates include all benefits payable to such persons employed in the respective Position/Job Classifications noted above and shall, except for any mark-up expressly by the Agreement, represent Architect's full compensation for the services performed by such persons in the respective Position/Job Classification noted above.

3. Reimbursable Expenses.

The following costs and expenses actually incurred and reasonably required for the performance of Architect's services are reimbursable subject to the terms of this Agreement:

- a. Reasonable travel and living expenses of Architect outside its headquarter city, incurred on visits pre-approved by Owner to Owner's Project(s) as herein required or as otherwise authorized by Owner. Private transportation shall be reimbursed at the IRS standard mileage rate in effect at the time of travel; commercial air travel shall be reimbursed at tourist class rates, unless otherwise authorized by Owner. Meals should be within reasonable limits and are subject to a \$50 per person, per day, maximum.
- b. The actual cost of all long distant telephone calls, telegrams, and shipping and postage expense which may be necessary to provide services required hereunder.
- c. The cost of office supplies, parking, document reproduction, check plots, mylar ink plots, CAD plots, mock-ups (if authorized by Owner), typography, technical specifications, offset printing, laser plots, long-distance telephone, photography, photographic supplies and prints, renderings, models (if authorized by Owner), postage, delivery, computer equipment time, and other similar project related expenses.
- d. Any additional insurance costs pre-approved by Owner in writing.

Costs and expenses not specifically listed above, unless previously approved in writing by Owner, are not reimbursable. Further, personal items, such as magazines, candy, cigarettes, airline beverages, etc., are not reimbursable.

4. Terms of Payment.

Architect shall submit monthly invoices in such form and supported by such documentation as reasonably required by Owner to identify and verify the amounts requested for payment (including fees and reimbursable costs whether incurred internally by Architect or through third-party vendors or subconsultants). Payment shall be made monthly, not later than thirty (30) days after submission of the invoice and documentation as required hereunder.

OWNER / ARCHITECT AGREEMENT EXHIBIT F

Instruments of Service: Conveyance of Rights to Owner

Instruments of Service. Drawings, specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants in connection with the Agreement are Instruments of Service (the "Instruments of Service").

Conveyance of Rights to Owner. To the fullest extent allowed by applicable law, Owner shall be the absolute and unqualified owner of the Instruments of Service for the Project, including all drawings, preliminary layouts, record drawings, sketches and other documents prepared and to be prepared pursuant to this Agreement by the Architect and its consultants, upon delivery thereof to Owner or its agents or contractors or upon submission thereof to such governmental authorities in connection with any required approval for the design and/or construction of the Project, with the same force and effect as if Owner prepared same, and Architect hereby assigns, conveys and grants all such rights to Owner, including all copyrights and other intellectual property rights with respect thereto. Upon Owner's request, all completed or partially completed mylar reproducible, preliminary layouts, record drawings, digital files, sketches and other documents prepared pursuant to this Agreement shall be delivered to Owner when and if this Agreement is terminated or upon completion of this Agreement, whichever occurs first. In such event, the Architect may retain one (1) set of reproducible copies of such documents and such copies shall be for the Architect's sole use in preparation of studies or reports for Owner only.

Re-Use of Instruments of Service by Owner. Owner agrees that before any re-use of the Instruments of Service without the Architect's consent in connection with (i) renovations of or additions to the Project for which signed and sealed design documents are required by applicable law, (ii) the re-construction of the Project, or (iii) any use of the Instruments of Service in connection with any other Project, Owner will bind by contract similarly credentialed design professionals to assume all responsibility for the design of any future improvements as their own and that all such Instruments of Service for future improvements will be sealed by those architects or design professionals, without any documented references to Architect or its consultants not engaged in the Project at the time. Owner hereby waives and releases any claim it may have against the Architect arising from any such re-use of such Instruments of Service without the express consent of the Architect.

Architect's Rights with Regard to Instruments of Service. The Architect is expressly prohibited from selling, licensing or otherwise marketing or donating the Instruments of Service, or using the Instruments of Service in the preparation of other work for any other owner, without the prior express written permission of Owner. Notwithstanding the foregoing, Architect hereby retains joint ownership of, and shall be entitled to use, details, effects and design components of the Project which may have been incorporated into the Instruments of Service, provided that such details, effects and design components when taken independently or in combination would not produce a project with substantially similar distinctive features to this Project. Additionally, to the extent that the Instruments of Service contain notes, terms or details that have been

developed by the Architect over years of practice, the Architect also shall have the right to use such details on other projects.

Scanned or Non-revisable Electronic Format Copies of Instruments of Service. As part of any Basic Services compensation, the Architect shall provide, in a medium (e.g., disk, magnetic tape, network direct transfer, etc.) approved by the Owner, a scanned or non-revisable electronic format copy (in PDF or DWF format as requested by Owner) of the most recent design drawings and such other Instruments of Service requested by Owner, including those which were produced or created by the Architect's consultants.

CAD File Electronic Format Copies of Instruments of Service. As part of any Basic Services Compensation, the Architect shall further provide those most recent design drawings and such other Instruments of Services requested by Owner in CAD File electronic format (the "Drawing Files"), including those which were produced or created by the Architect's consultants, subject to the following terms and conditions:

Owner shall be expressly authorized to use such Drawing Files for its own use for purposes of facilities management and leasing activities for the Project. Such Drawing Files shall not be used as actual working drawings for purposes of construction of improvements and shall not be furnished to tenants or prospective tenants or their agents, contractors or design professionals, without the Architect's express consent, except in a scanned or non-revisable electronic format such as PDF or DWF.

Owner acknowledges that significant differences may exist between Drawing Files and corresponding hard copy contract documents due to addenda, change orders or other revisions. Architect makes no representation regarding the accuracy or completeness of the Drawing Files furnished by Architect. In the event that a conflict arises between signed hard copy Instruments of Service and the Drawing Files, the signed hard copy Instruments of Service shall govern.

Because of the potential that the information presented on the Drawing Files can be modified, unintentionally or otherwise, Architect may, where permitted by law, remove its seal from each electronic display.

Owner agrees and acknowledges that the delivery of the Drawing Files for use by the Owner shall not constitute a sale and that no rights are transferred beyond those expressly contained in this Agreement. Except as otherwise provided in this Agreement, Architect makes no warranties, either express or implied, of merchantability and fitness for any particular purpose with regard to the Drawing Files.

Except as otherwise expressly provided herein, nothing herein shall relieve the Architect from any responsibility or liability it may have under the Agreement or applicable law for the hard copy Instruments of Service furnished to Owner or the information contained therein.

OWNER / ARCHITECT AGREEMENT
EXHIBIT G

OWNER'S STANDARD GENERAL CONDITIONS

[See Attached]

DRAFT AIA Document A201™ - 2007

General Conditions of the Contract for Construction

for the following PROJECT:
(Name and location or address)

STADIUM TRACT FACILITIES

THE OWNER:
(Name and address)

CITY OF FRISCO, TEXAS

THE ARCHITECT:
(Name and address)

THE CONTRACTOR:

References herein to the "Contractor" shall mean the "Construction Manager" as identified in the A133 Agreement entered into by the parties for the Project.

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- 1 GENERAL PROVISIONS
- 2 OWNER
- 3 CONTRACTOR
- 4 ARCHITECT/ROLE OF DESIGN PROFESSIONAL DURING CONSTRUCTION
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- 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
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ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA Standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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- 13 MISCELLANEOUS PROVISIONS
- 14 TERMINATION OR SUSPENSION OF THE CONTRACT
- 15 CLAIMS AND DISPUTES

TEAR

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User Notes:

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the "Agreement"). See Articles 1 and 16 of the Agreement.

§ 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, or (3) between any persons or entities other than the Owner and the Contractor.

§ 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project. The Work includes all labor, parts, supplies, skill, supervision, transportation, services and other facilities and things necessary, proper or incidental to the carrying out and completion of the terms of the Contract Documents and all other items needed to produce, construct and fully complete the Work items shown by the Contract Documents.

§ 1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by separate contractors.

§ 1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

§ 1.1.6 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services. Consistent with Article 1 of the Agreement, in the event of any inconsistency or conflict between any provision in the Agreement (or Exhibits attached thereto and incorporated therein) and the General Conditions, on the one hand, and any provisions in the Specifications, on the other hand, the terms of the Agreement and the General Conditions shall control.

§ 1.1.7 INSTRUMENTS OF SERVICE

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements and to which the Owner has been granted certain rights as set out in the Agreement between the Owner and the Architect for the design services for the Project. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 APPLICABLE LAW

Except as otherwise expressly provided in the Agreement, the term "Applicable Law" or "Applicable Laws" as used in the Contract Documents shall have the meaning set forth in the Agreement.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary (except as otherwise provided in Article 1 of the Agreement), and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. Notwithstanding the foregoing, but except as otherwise provided in the Agreement with regard to the precedence given to Contract Documents, in the event of inconsistencies within or between parts of the Contract Documents, or between the Contract Documents and applicable standards, codes and ordinances, the Contractor shall (1) provide the better quality or greater quantity

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of Work and (2) comply with the more stringent requirement. With regard to inconsistencies in the Drawings, given dimensions shall take precedence over scaled measurements, and large scale drawings over small scale drawings. The terms and conditions of this Section shall not relieve the Contractor of any of the obligations set forth in Sections 3.2 and 3.7. Should the Contractor find discrepancies, omissions or conflicts within the Contract Documents, or be in doubt as to their meaning, the Contractor shall at once notify the Architect, who will issue a written addendum to all parties.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 CAPITALIZATION

Terms capitalized in these General Conditions include those that are (1) specifically defined; (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 INTERPRETATION

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 1.5.1 The Drawings, Specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are Instruments of Service through which the Work to be executed by the Contractor is described. Neither the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of applicable copyrights or other reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

ARTICLE 2 OWNER

§ 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative (Owner's Designated Representative as identified in the Agreement and Exhibits thereto).

§ 2.1.2 [Intentionally deleted.]

§ 2.1.3 The presence of the Owner or Blue Star (or their representatives) or Architect at the Site does not imply acceptance or approval of the Work.

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§ 2.1.4 It is understood and agreed that the relationship of Contractor to Owner shall be that of an independent contractor. Nothing contained herein or inferable herefrom shall be deemed or construed to (1) make Contractor the agent, servant, or employee of the Owner or (2) create any partnership, joint venture, or other association between Owner and Contractor. Any direction or instruction by Owner or any of its authorized representatives in respect of the Work shall relate to the results the Owner desires to obtain from the Work, and shall in no way affect Contractor's independent contractor status as described herein.

§ 2.1.5 It is further understood and agreed that, because of the contractual obligations of Owner and Blue Star relating to the improvements to be constructed hereunder and the financing for construction arising under that certain Master Development Agreement for Dallas Cowboys Facilities and Related Improvements, Blue Star shall be a third-party beneficiary of this Contract. Construction Manager acknowledges and agrees that, notwithstanding the third party beneficiary rights of Blue Star arising under this Contract, Construction Manager is not contracting with Blue Star with regard to the construction of the improvements hereunder and that Construction Manager shall have no contractual cause of action against Blue Star arising from this Contract, except as may otherwise be expressly agreed, in writing, between the Construction Manager and Blue Star.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Contractor acknowledges and agrees that, prior to commencement of the Work, the Contractor has received all information requested by the Contractor or otherwise required by Applicable Law with regard to the financial arrangements Owner has made to fulfill the Owner's obligations under the Contract and is satisfied as to the adequacy of such arrangements. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the financial arrangements made by the Owner have materially changed. The Owner shall furnish such evidence as a condition precedent to continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities as provided by the Contract Documents.

§ 2.2.3 If requested to do so by the Contractor, the Owner shall furnish a survey describing, to the extent reasonable and customary, physical characteristics, legal limitations and utility locations (other than visible utilities). The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner in connection with such survey but shall exercise proper precautions relating to the safe performance of the Work. Notwithstanding the delivery of such information and documents by Owner, Contractor shall perform all work in a non-negligent manner so as to avoid damaging any utility lines, cables, pipes or pipelines on the Property. As between Owner and Contractor, Contractor shall be responsible for any damage(s) done to such lines, cables, pipes and pipelines during its construction work resulting from the negligent conduct of Contractor or any of its Subcontractors.

§ 2.2.4 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3. This right shall be in addition to, and not in restriction of, the Owner's rights under Subsection 12.2.

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§ 2.3.2 If suspension of the Work is warranted by reason of unforeseen conditions which are likely to adversely affect the quality of the Work if such Work were continued, Owner may suspend the Work by written notice to the Contractor. In such event, the Contract Time and the Contract Sum shall be adjusted accordingly, subject to the terms of Sections 3.2, 3.7.4, and 8.3.3 hereof. If Contractor, in its reasonable judgment, believes that a suspension is warranted by reason of unforeseen circumstances which may adversely affect the quality of the Work if the Work were continued, Contractor shall immediately notify Owner and Blue Star of such belief.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

§ 2.4.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies including, without limitation, Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor shall be reasonable and necessary. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. The rights of the Owner hereunder shall not give rise to any duty on the part of the Owner to exercise same for the benefit of the Contractor or any other person or entity. If providing the above-referenced prior notice to the Contractor is not reasonable because of an emergency or exigent circumstances, the Owner shall provide only such prior notice which is reasonable under the circumstances.

§ 2.4.2 After the Work is complete, the Owner may make emergency repairs to the Work if necessary to prevent further damage, or if the Contractor does not promptly respond to a notice of a condition requiring repairs. Contractor shall be responsible to Owner for this cost if the reason for the repairs is defects in Contractor's Work. If payments then or thereafter due the Contractor are not sufficient to cover such costs, the Contractor shall pay the difference to the Owner.

§ 2.5 EXTENT OF OWNER'S RIGHTS.

§ 2.5.1 The rights stated in this Article 2 and elsewhere in the Contract Documents are cumulative and not in limitation of any rights of the Owner (1) granted in the Contract Documents, (2) at law or (3) in equity.

§ 2.5.2 In no event shall the Owner have control over, charge of, or any responsibility for construction means, methods, techniques, sequences or procedures or for safety precautions and programs in connection with the Work, notwithstanding any of the rights and authority granted the Owner in the Contract Documents.

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement (or as the "Construction Manager" if the Agreement is an AIA A133) and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Construction Manager or the Construction Manager's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents and all Applicable Law, including all statutes, ordinances, building codes and governmental rules and regulations that bear upon the performance of the Work. The Contractor shall prosecute the Work in a good and workmanlike manner, continuously and diligently in accordance with generally accepted standards for construction of projects similar to the Project, using qualified, careful, and efficient workers and in conformity with the provisions of this Contract and the other Contract Documents. Contractor shall at all times use reasonable measures to protect the Work from damage caused by weather and casualties.

§ 3.1.3 The Contractor shall furnish construction administration and management services as required by the Contract Documents and use the Contractor's best efforts to perform the Work of the Project in an expeditious and economical manner consistent with the interests of the Owner. The Owner shall endeavor to promote harmony and

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cooperation among the Owner, Architect, Contractor and other persons or entities employed by the Owner for the Project.

§ 3.1.4 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Without limiting its obligations under the Contract Documents, execution of the GMP Amendment (see Section 2.2.6 of the Agreement) by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents. The Contractor and each Subcontractor shall evaluate and satisfy themselves as to the conditions and limitations under which the Work is to be performed, including, without limitation (1) the location, reasonably observable condition and the layout and nature of the Project site and surrounding areas, (2) generally prevailing climatic conditions, (3) anticipated labor supply and costs, (4) availability and cost of materials, tools and equipment and (5) other similar issues. The Owner assumes no responsibility or liability for the physical condition or safety of the Project site or for any improvements located on the Project site or for price escalations in the marketplace. Price escalations in the marketplace shall not be reimbursed by the Owner in excess of the GMP and shall not cause the GMP to be increased. The Contractor (as between the Owner and the Contractor) shall be solely responsible for providing a safe place for the performance of the Work. The Owner shall not be required to make any adjustment in either the Contract Sum or Contract Time in connection with any failure by the Contractor or any Subcontractor to comply with the requirements of this Section.

§ 3.2.2 Without limiting its obligations under the Contract Documents, because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report in writing to the Owner, Blue Star, and Architect (as a request for information in such form as the Architect may require) any errors, inconsistencies or omissions discovered by or made known to the Contractor. It is recognized that the Contractor's review is made in the Contractor's capacity as an experienced contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

Notwithstanding the foregoing, the exactness of grades, elevations, dimensions, or locations given on any Drawings issued by the Architect, or the work installed by other contractors, is not guaranteed by the Architect or the Owner. The Contractor shall, therefore, satisfy itself as to the accuracy of all grades, elevations, dimensions and locations. In all cases of interconnection of its Work with existing or other work, it shall verify at the site all dimensions relating to such existing or other work. Any errors due to the Contractor's failure to so verify all such grades, elevations, locations or dimensions shall be promptly rectified by the Contractor without any additional cost to the Owner.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with Applicable Law, including all applicable statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report in writing to the Owner, Blue Star, and the Architect any nonconformity discovered by or made known to the Contractor or any suspected nonconformity which has been raised or discussed by Contractor's supervisory personnel as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions issued by the Owner or the Architect in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents or for nonconformities of the Contract Documents to Applicable Law, unless

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the Contractor recognized, or in the exercise of reasonable caution and care should have recognized, such error, inconsistency, omission or difference and failed to report it to the Architect.

§ 3.2.5 Prior to performing any Work, Contractor shall locate all utility lines, including telephone company lines and cables, sewer lines, water pipes, gas lines, electrical lines, including, but not limited to, all buried pipelines and buried telephone cables, as shown and located on the plans and specifications and the survey (if any) furnished pursuant to Section 2.2.3 above and shall perform any Work in such a manner so as to avoid damaging any such lines, cables, pipes and pipelines. Contractor shall be responsible for any negligent damage done to said lines, cables, pipes and pipelines during its construction work. In addition, Contractor shall review any applicable hazardous materials surveys for the particular buildings, if any, involved in the Project(s), and shall notify all Subcontractors and Sub-subcontractors of the necessity to review said surveys. Contractor shall perform any Work in such a manner as to avoid damaging, exposing or dislodging any asbestos-containing materials that are clearly identified and located in any such hazardous material surveys.

§ 3.2.6 Neither any oral representation by or oral agreement with the Owner, Blue Star, Architect, or any representative, consultant, officer, agent, or employee of Owner, Blue Star, or Architect before execution of this Contract shall affect or modify any of Contractor's rights or obligations hereunder, all such prior oral representations, understandings, and agreements being superseded by this Contract. Contractor is not aware of any facts that make misleading or inaccurate in any material respect any information Owner, Blue Star, or Architect or any of their representatives, consultants, officers, agents, or employees have furnished to Contractor which would have a material, adverse effect on the Contract Time or Contract Sum, and if, during the course of the performance of the Work, Contractor learns of any such facts, it will so advise each of said parties.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner, Blue Star, and Architect and shall not proceed with that portion of the Work without further written instructions from the Owner. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any resulting loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures except to the extent such loss or damage results from or is caused by the Contractor's failure to follow instructions or the Contractor's failure to exercise reasonable care and skill in carrying out such instructions. Contractor shall bear responsibility for design and execution of acceptable trenching and shoring procedures, in accordance with Texas Government Code, Section 2166.303 and Texas Health and Safety Code, Subchapter C, Sections 756.021, *et seq.*

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors, Sub-subcontractors, and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors and Sub-subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.3.4 Contractor, its subcontractors and vendors shall bear responsibility for compliance with Applicable Law, including but not limited to all federal, state and local laws, regulations, guidelines and ordinances pertaining to worker safety and applicable to the Work. Contractor further recognizes that the Owner and Architect do not owe the Contractor any duty to supervise or direct his work so as to protect the Contractor from the consequences of his own conduct. In case of entry by the Contractor or any of the Contractor's agents or employees, upon the property or premises of the Owner, for the purposes of construction, erection, inspection, or delivery under this contract, the Contractor agrees to provide (or cause to be provided through its Subcontractors) all necessary sufficient safeguards and to take all proper precautions against the occurrence of accidents, injuries, or damages to any person or property.

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§ 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. The Contractor shall check all materials and labor entering into the Work and shall keep full detailed accounts thereof.

§ 3.4.2 Contractor may make substitutions only with the consent of the Owner as provided herein and in accordance with a Change Order or Construction Directive.

§ 3.4.2.1 Contractor may submit for consideration proposed substitutions of materials, equipment or processes from those set out in the Contract Documents. Submittals of proposed substitutions must be made in writing at such time as not to delay the Work and should contain sufficient information to allow the Architect and Owner to determine if the proposed substitution is in fact equal to or better than the requirements of the Contract Documents. The Architect shall review proposed substitutions within a reasonable time. Contractor shall bear the risk of any delay in performance caused by submitting substitutions. The Owner may approve or deny substitutions in its sole discretion. No approved substitution shall change the requirements of the Contract Documents until it has been incorporated into the Contract as a Modification in accordance with the requirements of the Contract Documents.

§ 3.4.2.2 When specific products, systems or items of equipment are referred to in the Contract Documents, any ancillary devices necessary for proper functioning shall also be provided, but not including any manufacturers' options on any particular device, which device is specified in the Contract Documents. When standards, codes, manufacturer's instructions and guarantees are required by the Contract Documents with no edition specified, the current edition at the time of contract execution shall apply. References to standards, codes, manufacturer's instructions and guarantees shall apply in full, except (1) they do not supersede more stringent standards set out in the Contract Documents, and (2) any exclusions or waivers that are inconsistent with the Contract Documents do not apply.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.5 WARRANTY

§ 3.5.1 The Contractor warrants to the Owner that materials and equipment furnished under the Contract will be of specified quality, recent manufacture, and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work that the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements, including substitutions not properly approved and authorized, shall be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner or the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The warranties set out in this subsection are in addition to and not exclusive of any other warranties or guarantees set out in other places in the Contract Documents or implied under Applicable Law or the Contractor's obligations under the corrective period set out in Article 12 below.

§ 3.5.2 The Contractor agrees to assign to the Owner at the time of final completion of the Work and as a condition to final payment (see Section 12.2.6 of the Agreement), any and all manufacturer's warranties relating to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties. The Contractor warrants that all manufacturers' or other warranties on all materials and equipment furnished by or through the Contractor shall run directly to or be specifically assigned to the Owner at Substantial Completion of the Project. The Contractor warrants that the installation of all materials and equipment shall be in strict accordance with the manufacturers' requirements or specifications, as applicable. If required by the Contract Documents, prior to Substantial Completion, the Contractor shall obtain a statement from the manufacturer approving the Contractor's installation of all materials and equipment. If the Owner seeks to enforce a claim based upon a manufacturer's warranty and such manufacturer fails to honor its warranty based, in whole or in part, on a

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claim of defective installation, the Owner shall be entitled to enforce any claim for defective installation against the Contractor.

§ 3.5.3 All required warranties on equipment, machinery, materials, or components shall be submitted to the Architect on the manufacturer's or supplier's approved forms at the time of Substantial Completion.

§ 3.6 TAXES

This Project is eligible for exemption from the State Sales Tax on materials incorporated in the Project, provided that Contractor fulfills the requirements of State Tax Laws. For purposes of establishing exemption, it is understood and agreed that Contractor will be required to segregate materials and labor costs at the time a contract is awarded, and will accept an exemption certificate from Owner. The Contractor shall pay any taxes out of its Fee (*i.e.*, not as a reimbursable Cost of the Work) otherwise assessed because of Contractor's failure to comply with the requirements of State Law to qualify for that tax exemption.

§ 3.7 PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall assist the Owner in securing, but the Owner shall pay for, the building permit. The Contractor shall be responsible for payment of all other permits, governmental fees, licenses, and inspections necessary for proper execution of the contract and which are legally required as of the date of the Agreement. The Contractor shall also obtain all permits and approvals, and pay all fees and expenses, if any, associated with National Pollutant Discharge Elimination System (NPDES) regulations administered by the Environmental Protection Agency (EPA) and local authorities, if applicable, that require completion of documentation and/or acquisition of a "Land Disturbing Activities Permit" for the project. Contractor's obligations under this paragraph do not require it to perform engineering services during the pre-construction phase to prepare proper drainage for the construction sites. However, any drainage alterations made by Contractor during the construction process which modifies the original site drainage plan and requires the issuance of a permit shall be at Contractor's sole cost.

§ 3.7.2 The Contractor shall comply with and give notices required by Applicable Laws, including all applicable statutes, ordinances, codes, rules and regulations, and lawful orders and all other requirements of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing, or in the exercise of reasonable caution and care should have known, it to be contrary to Applicable Law or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction. Without limiting the foregoing, in the event that Contractor deviates from the plans and specifications, except to the extent such deviation is expressly authorized by the Contract Documents and approved by the Owner and the Architect in writing, Contractor shall assume responsibility for such deviations and shall bear the costs of bringing such Work into compliance with Applicable Law and the Contract Documents.

§ 3.7.4 Concealed or Unknown Conditions. If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or which were not reasonably inferable by the Contractor from the Contract Documents and field conditions at the site of the Project or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, or (3) unknown or concealed physical conditions that Contractor should not reasonably have known or anticipated based on the area in which the site of the project is located, the type of improvements involved, or the practices prevalent in the construction industry, the Contractor shall promptly provide notice to the Owner, Blue Star, and the Architect before conditions are disturbed and in no event later than ten (10) days after first observance of the conditions. The Owner will direct the Architect to investigate such conditions and, if the Architect finds that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner and Contractor agree with the Architect's recommendations, the parties will execute a Change Order to reflect such agreed adjustment. If the Architect finds that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's findings or recommendation, that party may proceed as provided in Article 15.

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§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner, Blue Star, and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- 1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- 2 Contractor's costs for unloading and handling at the site, labor, installation costs, and other expenses contemplated for stated allowance amounts shall be included in the allowances; and
- 3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in the Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.8.4 Contractor shall keep separate and adequate records of all allowances and shall submit such records to Owner from time to time upon request. Owner shall be responsible for costs incurred in excess of allowance amounts only to the extent approved by Owner in writing.

§ 3.8.5 Allowances shall be reflected in the Schedule of Values and Contractor shall not have the right to shift allowances to other line items in the Schedule of Values except in accordance with the requirements of Section 7.1.5 of the Agreement and with the Owner's written approval, in its sole discretion.

§ 3.9 SUPERINTENDENT / SAFETY PROFESSIONAL

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Additionally, the Contractor shall employ a competent safety professional (who may or may not be the superintendent) and necessary assistants who shall be in attendance at the project site during performance of the work. The safety professional shall enforce all applicable construction safety standards, develop a progressive discipline program, monitor employee safety compliance, and document safety violations. Important communications shall be confirmed in writing.

§ 3.9.2 The parties acknowledge and agree that, as part of the selection process of the Contractor by the Owner and prior to the execution of the Agreement, the Contractor has submitted the names of its Senior Project Personnel, including the Contractor's Project Manager who will be responsible for the Project, and all full-time supervisory personnel for the Project, including the superintendent. Contractor's Senior Project Personnel are as identified in the Agreement and have been approved by the Owner.

§ 3.9.3 The Contractor shall not employ a proposed superintendent or any other Senior Project Personnel to whom the Owner has made reasonable and timely objection. The Contractor shall not change the superintendent or any other Senior Project Personnel without the Owner's consent, which shall not unreasonably be withheld or delayed.

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§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES / REPORTS

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's, Blue Star's, and Architect's information a Contractor's construction schedule for the Work ("Contractor's Progress Schedule"). The Contractor's Progress Schedule shall not exceed time limits current under the Contract Documents (including the Critical Milestones, if any, established in the Contract Documents), shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. A detailed critical path schedule format shall be used for the Contractor's Progress Schedule with thorough updates to such Schedule prepared at least monthly. All Schedule updates shall address the subject of how the Contractor intends to address any critical path delays previously encountered. The Contractor's Progress Schedule and all updates should address submittal activities as well as actual field construction activities.

§ 3.10.2 The Contractor shall prepare and keep current, for the Owner's approval, a schedule of submittals which is coordinated with the Contractor's Progress Schedule, and allows the Owner, Blue Star, and the Architect reasonable time to review submittals. If the Contractor fails to submit and maintain a submittal schedule as required herein, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent Contractor's Progress Schedule submitted to the Owner and Blue Star, provided such Schedule is consistent with and does not exceed the time limits under the Contract Documents, including but not limited to the Schedule of the Work and its Critical Milestones, if any.

§ 3.10.4 Failure of the Work to proceed in the sequence scheduled by Contractor shall not alone serve as the basis for a Claim for additional compensation or time. In the event there is interference with the Work which is beyond its control, Contractor shall attempt to reschedule the Work in a manner that will hold resulting additional time and costs to a minimum.

§ 3.10.5 The Contractor shall maintain a daily log containing a record of weather, Subcontractors working on the site, number of workers, Work accomplished, problems encountered and other similar relevant data as the Owner may reasonably require. The log shall be available to the Owner, Blue Star, and Architect. The Contractor shall also develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Contractor shall identify variances between actual and estimated costs and report the variances to the Owner, Blue Star, and Architect at regular intervals. The Contractor shall additionally prepare a monthly schedule summary report in a form and of sufficient detail and character as approved by the Owner. The report at a minimum shall include a four week "look ahead" and specify whether the Project is on schedule, and if not, the reasons therefor and the terms of the new schedule, all in comparative form. The Contractor shall hold weekly progress meetings at the Site (with Owner and its authorized representatives entitled to attend) or at such other time, place, and frequency as are reasonably acceptable to Owner. Progress of the Work shall be reported in detail with reference to construction schedules. Contractor shall be responsible for preparing and distributing (on the business day preceding the meeting) to Owner, Blue Star, and Architect a written agenda for the meeting, in a form and with such content as reasonably required by Owner, which includes a status report of all pending submittals, RFI's, known or anticipated impediments to construction, accidents and injuries, and pending business/action items (with a designation of who is responsible for each pending item). When it appears to Owner or Contractor that a contract milestone or completion date cannot be met for reasons not the fault of the Contractor, Contractor will develop with Owner a plan and a budget under the Change Order provision of the Contract Documents to meet such a situation either (at Owner's option) by accelerating the Work to overcome the delays, or suspending or otherwise slowing the Work to efficiently take advantage of any relaxation in Owner's need for the completed Work.

§ 3.10.6 Unless otherwise directed by Owner, the Contractor shall prepare and promptly distribute meeting minutes of all monthly and weekly meetings held hereunder.

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

§ 3.11.1 The Contractor shall maintain at the site for the Owner one record copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record changes (including changes in the field) and selections made during construction. At the end of construction, these documents shall be

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turned over to the Owner with the Contractor's certification that they show complete and exact "as-built" conditions. The Contractor shall further maintain at the site and available for Owner's inspection one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Owner, Blue Star, and the Architect and shall be delivered to the Owner upon completion of the Work.

§ 3.11.2 Contractor shall at all times maintain job records, including, but not limited to, invoices, payment records, payroll records, daily reports, logs, diaries, and job meeting minutes, applicable to the project. Contractor shall make such reports and records available to inspection by the Owner, Architect, or their representative agents, within five (5) working days of request by Owner, Architect, or their agents.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. If the Contractor is installing materials as expressly required by the Contract Documents, a submittal shall not be required unless requested by the Owner or the Architect. However, the Contractor must keep detailed records of what is installed and not submitted for approval, and shall assume full responsibility to correct any issue that may arise if the materials are not installed in accordance with the Contract Documents.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect and to the Owner (if requested by the Owner) all Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Owner or the Architect (pursuant to Sec. 3.12.4 above) or the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Owner and the Architect in writing of such deviation at the time of submittal and (1) the Owner has given written approval to the specific deviation as a minor change in the Work, such deviation having been identified in writing by the Contractor, or (2) a Change Order or Construction Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. In such event, the Contractor shall provide design and other professional services in full compliance with Applicable Law. When such services are required under Applicable Law to be performed by properly licensed professionals, the Contractor shall cause such services or certifications to be provided by such properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents. In the event that Contractor retains a licensed design professional under the terms of this paragraph, Contractor shall require that licensed design professional to carry comprehensive general liability and errors and omissions insurance coverage in the same amounts and forms as that required of the Architect on this Project. In the event that that licensed design professional retained by the Contractor will be conducting on-site services or observations, the licensed design professional shall also carry worker's compensation insurance and comprehensive automobile liability in the same amounts and forms required of the Architect on this Project.

§ 3.12.11 The Contractor shall assemble for approval by Owner three (3) copies in loose leaf binders of all operating and maintenance data for all equipment installed as a part of the Work, which binders must be delivered to Owner on or before Final Completion of the Work or as otherwise provided in the Contract Documents.

§ 3.13 USE OF SITE

§ 3.13.1 The Contractor shall confine operations at the site to areas permitted by Applicable Law and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.13.2 Protection of construction materials and equipment stored at the Project site from weather, theft, damage and all other adversity is solely the responsibility of the Contractor.

§ 3.14 CUTTING AND PATCHING

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

§ 3.15 CLEANING UP

§ 3.15.1 The Contractor shall maintain a reasonably neat and orderly jobsite and shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At

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completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 ACCESS TO WORK

The Contractor shall provide the Owner, Blue Star, and Architect, and their consultants and representatives, access to the Work in preparation and progress wherever located.

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner, Blue Star, and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Owner and the Architect.

§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law (including Chapter 151, Texas Insurance Code), the Contractor hereby protects, indemnifies and holds harmless and shall defend the Owner, the Owner's Lender (if any), and Blue Star, and their directors, officers, parents, subsidiaries, affiliates, joint venturers, partners, employees, agents and representatives (hereinafter referred to individually as an "Indemnified Party" and collectively as the "Indemnified Parties") from and against claims, actions, liabilities, losses, and expenses, including but not limited to attorneys' fees and costs and expenses of litigation or arbitration incurred by an Indemnified Party, arising out of or resulting from the performance or a failure in the performance of the Work of the Contract by or through the Contractor or any other negligent or wrongful act or omission of the Contractor or one of its Subcontractors or Suppliers (of any tier) or anyone else directly or indirectly employed by them or anyone for whose acts they may be liable (hereinafter referred to collectively as the "Subcontractor Parties"), except to the extent caused by the negligent acts or omissions of the Indemnified Parties or their design professionals, consultants, or separate contractors (other than the Contractor and the Subcontractor Parties). Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 3.18.

CONTRACTOR'S INDEMNIFICATION OBLIGATIONS UNDER THIS SECTION 3.18 SHALL ARISE REGARDLESS OF ANY ASSERTION OR FINDING THAT OWNER OR ANY OTHER INDEMNIFIED PARTY IS LIABLE BY REASON OF NON-DELEGABLE DUTY, IS LIABLE FOR JOINT, CONCURRING, OR CONTRIBUTORY NEGLIGENCE OR BREACH OF CONTRACT OR VIOLATION OF LAW, OR OTHERWISE CAUSED, IN PART, THE LIABILITIES.

Expenses recoverable by an Indemnified Party as part of the Contractor's indemnity obligations under this Section 3.18 shall include, without limitation, all attorneys' fees and any costs incurred by Owner in enforcing the provisions of the Contractor's indemnity obligations.

Except as provided in Subsections 3.18.2 through 3.18.4 below, in the event that an Indemnified Party or their design professionals, consultants, or separate contractors (other than the Contractor and the Subcontractor Parties) are found, by final judgment or arbitration award, to be negligent or at fault in whole or in part, the indemnity and hold harmless obligation of the Contractor with regard to attorney's fees and litigation or arbitration costs and expenses incurred by an Indemnified Party in defense of such claim shall be reduced by the percentage of negligence or fault of the Indemnified Party and/or their design professionals, consultants, or separate contractors (other than the Contractor and the Subcontractor Parties).

§ 3.18.2 BROAD FORM INDEMNITY FOR EMPLOYEE, ON-THE-JOB BODILY INJURY CLAIMS:

WITHOUT LIMITING THE FOREGOING, TO THE FULLEST EXTENT PERMITTED BY LAW, THE CONTRACTOR HEREBY INDEMNIFIES, DEFENDS, AND HOLDS HARMLESS THE OWNER AND THE OTHER INDEMNIFIED PARTIES FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEY'S FEES AND LITIGATION OR ARBITRATION COSTS AND EXPENSES INCURRED BY OWNER AND/OR THE OTHER INDEMNIFIED PARTIES HEREUNDER, IN CONNECTION WITH SUCH ACTIONS AGAINST OWNER AND/OR AN INDEMNIFIED PARTY FOR THE PERSONAL INJURY AT THE PROJECT SITE OF AN EMPLOYEE OF THE CONTRACTOR OR ITS SUBCONTRACTORS OF ANY TIER, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, BROUGHT BY SUCH INJURED EMPLOYEE OR THE EMPLOYEE'S WORKERS COMPENSATION INSURANCE CARRIER (HEREINAFTER REFERRED TO AS AN "EMPLOYEE INJURY CLAIM"), EVEN TO THE EXTENT OF THE NEGLIGENCE OR FAULT OF THE OWNER OR THE INDEMNIFIED PARTIES.

§ 3.18.3 BROAD FORM INDEMNITY FOR INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS:

WITHOUT LIMITING THE FOREGOING, AND TO THE FULLEST EXTENT PERMITTED BY LAW, THE CONTRACTOR HEREBY INDEMNIFIES, DEFENDS, AND HOLDS HARMLESS THE OWNER AND THE OTHER INDEMNIFIED PARTIES FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEY'S FEES AND LITIGATION OR ARBITRATION COSTS AND EXPENSES INCURRED BY OWNER AND/OR THE OTHER INDEMNIFIED PARTIES HEREUNDER, IN CONNECTION WITH SUCH ACTIONS AGAINST OWNER AND/OR AN INDEMNIFIED PARTY FOR AN INFRINGEMENT OR ALLEGED INFRINGEMENT OF A COPYRIGHT OR OTHER SIMILAR INTELLECTUAL PROPERTY RIGHT IN CONNECTION WITH ANY INSTRUMENTS OF SERVICE FURNISHED BY OR THROUGH THE CONTRACTOR OR ANY DESIGN OF THE PROJECT BY OR THROUGH THE CONTRACTOR (TO THE EXTENT CONTRACTOR HAS ASSUMED DESIGN RESPONSIBILITIES UNDER THE CONTRACT DOCUMENTS) OR IN CONNECTION WITH A MEANS, METHOD OR PROCESS USED BY THE CONTRACTOR IN THE PERFORMANCE OF THE WORK OF THE CONTRACT (HEREINAFTER REFERRED TO AS AN "INTELLECTUAL PROPERTY INFRINGEMENT CLAIM"), EVEN TO THE EXTENT OF THE NEGLIGENCE OR FAULT OF THE OWNER OR THE INDEMNIFIED PARTIES.

§ 3.18.4 BROAD FORM OBLIGATION TO DEFEND EMPLOYEE INJURY AND INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS UPON OWNER'S DEMAND.

In addition to and notwithstanding the foregoing, upon timely written notice, Owner may, in its sole discretion, require Contractor to defend the Owner and the other Indemnified Parties in connection with any action (whether in litigation or arbitration) asserting an "Employee Injury Claim" or an "Intellectual Property Infringement Claim". TO THE FULLEST EXTENT ALLOWED BY LAW, CONTRACTOR'S OBLIGATION TO DEFEND OWNER OR ANY OTHER INDEMNIFIED PARTY IN AN ACTION ASSERTING AN EMPLOYEE INJURY CLAIM OR AN INTELLECTUAL PROPERTY INFRINGEMENT CLAIM SHALL ARISE REGARDLESS OF THE ALLEGED NEGLIGENCE OR FAULT OF THE OWNER OR SUCH OTHER INDEMNIFIED PARTY FOR WHOM CONTRACTOR IS OBLIGATED TO DEFEND. IN THE EVENT SUCH DEFENSE HAS BEEN TENDERED TO CONTRACTOR AND CONTRACTOR HAS REFUSED OR FAILED TO DEFEND SUCH CLAIM, CONTRACTOR SHALL BE LIABLE AND SHALL REIMBURSE OWNER AND SUCH OTHER INDEMNIFIED PARTIES FOR THEIR ATTORNEY'S FEES AND LITIGATION OR ARBITRATION COSTS AND EXPENSES INCURRED IN SUCH DEFENSE, REGARDLESS OF ANY FINDING OR DETERMINATION OF NEGLIGENCE OR FAULT OF THE OWNER OR SUCH OTHER INDEMNIFIED PARTIES.

§ 3.18.5 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section 3.18 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor or Sub-subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 3.18.6 Contractor's indemnification obligations arising under this Section 3.18 shall not be limited by any limitation on the measure of damages as set forth in the Contract Documents.

§ 3.18.7 The indemnity provisions set forth in this Section 3.18 shall survive the expiration or earlier termination of this Contract, the final completion of the Work, and any other services to be provided pursuant to this Agreement.

ARTICLE 4 ARCHITECT /ROLE OF DESIGN PROFESSIONAL DURING CONSTRUCTION

§ 4.1 GENERAL

§ 4.1.1 The Architect is the person lawfully licensed to practice architecture (or engineering if the professional design services required to be performed hereunder are authorized under Applicable Law to be performed by a licensed engineer) or an entity lawfully practicing architecture (or engineering if so authorized) identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 4.1.2 [Intentionally deleted.]

§ 4.1.3 [Intentionally deleted.]

§ 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide such services with regard to the administration of the Contract as described in the Contract Documents or as requested by the Owner. The Architect will have no authority to act on behalf of the Owner unless otherwise expressly authorized in writing by the Owner.

§ 4.2.2 Upon the Owner's request, the Architect, and such other consultants retained by the Owner, will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work or portions thereof observed is being performed in a manner indicating that the Work or portions observed, when fully completed, will be in accordance with the Contract Documents. However, the Owner does not currently intend for the Architect or such other consultants of the Owner to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. Neither the Architect nor such other consultants of the Owner will have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1. Any failure by the Architect or such other consultants of the Owner to inform the Contractor or any observed non-compliance shall not constitute a waiver by Architect or Owner of the right to insist upon compliance by Contractor.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. Neither the Owner nor its agents or consultants, including the Architect will be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. Neither the Owner nor its agents or consultants, including the Architect will have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, Sub-subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents, the Architect, Blue Star, and such other persons designated by the Owner shall be copied on all correspondence between the Owner and Contractor. The Owner and Contractor may communicate directly with each other or indirectly through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect

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with the Owner copied on all written communications. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

§ 4.2.5 The Owner reserves the right, upon written notice to the Contractor, to require the Architect or another third-party consultant to review and certify the amounts due the Contractor and issue Certificates for Payment in such amounts based upon its evaluations of the Work and of the Contractor's Applications for Payment.

§ 4.2.6 The Owner reserves the right, upon written notice to the Contractor, to give the Architect (or such other person designated by the Owner) authority to reject Work that does not conform to the Contract Documents. In such event, whenever the Architect or such other person designated by the Owner considers it necessary or advisable, the Architect or such other designated person will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect (or such designated person) nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or such designated person to the Contractor, Subcontractors, Sub-subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect (or such other person designated by the Owner) will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The action by the Architect (or such other person designated by the Owner) will be taken in accordance with the submittal schedule approved by the Owner or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time to permit adequate review by the Architect or such other person designated by the Owner. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The review hereunder of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The review hereunder shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect or such other person designated by the Owner, of any construction means, methods, techniques, sequences or procedures. The approval hereunder of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 Except as otherwise directed by the Owner or as required by the Contract Documents, the Contractor will prepare Change Orders for the Owner's approval. Construction Directives may be prepared by either the Owner or the Architect (with the Owner's approval).

§ 4.2.9 If requested by the Owner, the Architect will conduct inspections to assist the Owner in determining the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 *[Intentionally deleted.]*

§ 4.2.11 Upon the Owner's request, the Architect will initially interpret and decide matters concerning performance under, and requirements of, the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 *[Intentionally deleted.]*

§ 4.2.13 *[Intentionally deleted.]*

§ 4.2.14 The Architect (or such consultant or other person designated by the Owner) will review and respond to requests for information about the Contract Documents. The response by the Architect (or such other person designated by the Owner) to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect (or such other design professional designated by the

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Owner) will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

§ 4.2.15 Notwithstanding any other provision of this Agreement to the contrary, the Architect (or such other design professional designated by the Owner) shall have no authority to order or approve any material deviation from the Contract Documents, whether or not such deviation affects the Contract Sum or other Substantial Completion Date (as defined herein). In the event any such deviation is sought, prior written approval from Owner must be obtained.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" includes suppliers of materials, tools, consumables, equipment, or systems and entities renting equipment, tools or other items but does not include a separate contractor or subcontractors of a separate contractor. The term "Subcontract", whether capitalized or not, includes Purchase Orders and other supply contracts.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor", whether capitalized or not, is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor of any tier or an authorized representative of the Sub-subcontractor. The term "Sub-subcontractor" includes suppliers of materials, tools, consumables, equipment, or systems and entities renting equipment, tools or other items to a Subcontractor or another Sub-subcontractor.

§ 5.1.3 Contractor shall promptly notify Owner, Blue Star, and Architect of any material defaults by any Subcontractor or Sub-subcontractor.

§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after the GMP Amendment has been entered into by the parties, shall furnish in writing to the Owner, Blue Star, and the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) with whom Contractor has subcontracted or intends to subcontract for each portion of the Work.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner has made reasonable and timely objection and who has not been selected pursuant to the subcontractor bidding process required by the Agreement and Applicable Laws. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner makes reasonable objection to such substitution.

§ 5.3 SUBCONTRACTUAL RELATIONS

§ 5.3.1 By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will

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similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.3.2 Related Party Subcontractor. The Contractor shall not enter into any subcontract, contract, agreement, purchase order or other arrangement for the furnishing of any portion of materials, services, equipment or work with any party or entity if such party or entity is a Related Party (as defined in the Agreement), unless such arrangement has been approved by the Owner in writing, after full disclosure in writing by Contractor of such affiliation and Contractor has complied with the requirements of the Agreement relating to Related Parties. The term Related Party includes any entity related to or affiliated with the Contractor, its employees, agents, partners or shareholders, if any, has direct or indirect ownership or control.

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- 1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 (except as provided in Section 5.4.4 below) and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- 2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement under this Section 5.4.1, the Owner assumes the Contractor's rights and obligations under the subcontract with regard to the Work to be performed after the acceptance of the assignment.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than sixty (60) days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

§ 5.4.4 Notwithstanding the foregoing, in the event of a termination for convenience under Section 14.4 below, Contractor's rights under each subcontract agreement with regard to the respective subcontractor's obligation to correct defective or non-conforming work or with regard to the subcontractor's warranty obligations for portions of the Work performed by the subcontractor are assigned by the Contractor to the Owner in the event of such termination.

5.5 NOTICE OF MATERIAL DEFAULT / NO CLAIM BY SUBCONTRACTOR AGAINST OWNER

Contractor shall promptly notify Owner, Blue Star, and Architect of any material defaults by any Subcontractor. Notwithstanding any provision contained in Article 5 to the contrary, it is hereby acknowledged and agreed that Owner has in no way agreed, expressly or implicitly, nor will Owner agree, to allow any subcontractor or other materialman or workman employed by Contractor to create a lien or to obtain a personal judgment against Owner for the amount due from the Contractor.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under contracts with substantially similar provisions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

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§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

§ 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect and the Owner and Blue Star apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Contractor. The Owner shall be responsible to the Contractor for costs incurred by the Contractor because of delays, improperly timed activities, damage to the Work or defective construction of a separate contractor.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and equitably allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement between the Owner and Contractor (which may or may not be agreed to by the Architect); a Construction Directive may or may not be agreed to by the Contractor, an order for a minor change in the Work may be issued by the Owner alone pursuant to Section 7.4 below.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Directive, or order for a minor change in the Work.

§ 7.1.4 The Contractor, upon receipt of written notification by the Owner of a proposed item of change in the Work, shall prepare and deliver to the Owner, Blue Star, and the Architect, as soon as possible, a Change Proposal in such form or forms as directed by the Owner or the Architect and in accordance with the following:

- .1 Each Change Proposal shall be numbered consecutively and shall include material's costs, labor costs, fees, and other reimbursable Cost of the Work and any applicable Fee or profit. The Change Proposal shall specify all costs related to the proposed Change in the Work, including any disruption or impact on performance.
- .2 The Subcontractor's itemized accounting shall be included with the Change Proposal.
- .3 If Change Proposal is returned to the Contractor for additional information or if the scope of the proposed change in the Work is modified by additions, deletions or other revisions, the Contractor shall revise the Change Proposal accordingly and resubmit the revised Change Proposal to the Owner.
- .4 A revised Change Proposal shall bear a new Change Proposal number but shall cross-reference the previous Change Proposal.
- .5 Upon written approval of a Change Proposal by the Owner, the Contractor (or the Architect if otherwise required by the Contract Documents or directed by the Owner) will prepare a Change Order authorizing such change in the Work on such form as directed by the Owner.
- .6 The Contractor shall request extensions of Contract Time, if any, due to changes in the Work only at the time of submitting his Change Proposal. Contractor's failure to do so shall represent a waiver of any right to request a time extension.
- .7 The Contractor shall maintain such Change Order log (with Change Proposals) in such form as directed by Owner.

§ 7.1.5 Except as permitted in the Agreement or these General Conditions with regard to amounts to which Owner is entitled to payment or offset arising from Contractor's breach or default hereunder, a change in the Contract Sum or the Contract Time shall be accomplished only by Change Directive or Change Order. No course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that the Owner has been unjustly enriched by any alteration or addition to the Work, whether or not there is, in fact, any unjust enrichment to the Work, shall be the basis of any claim to any increase in any amounts due under the Contract Documents or a change in any time period provided for in the Contract Documents.

§ 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument (which may or may not be prepared or agreed to by the Architect) signed by the Owner and the Contractor stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.2.2 Unless otherwise provided in the Change Order, agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work which is the subject of the Change Order, including but not limited to, all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum and the construction schedule. In the event a Change Order increases the Contract Sum, Contractor shall include the Work covered by such Change Orders in Applications for Payment as if such Work were originally part of the Contract Documents.

§ 7.3 CONSTRUCTION DIRECTIVES

§ 7.3.1 A Construction Directive (also referred to in the Contract Documents as a "Construction Change Directive" or "Change Directive") is a written order (which may or may not be prepared or agreed to by the Architect) signed by the Owner, directing a change in the Work or the performance of Work which Contractor disputes as being included in its scope of the Work under the Contract Documents ("disputed Work") prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Directive, without invalidating the Contract, order changes in the Work or the performance of disputed Work consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly (to the extent such adjustment is required by the Contract Documents).

§ 7.3.2 A Construction Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- 1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation with the applicable mark-up as may be authorized under the Agreement;
- 2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- 3 Cost to be determined in a manner agreed upon by the parties with the applicable mark-up as may be authorized under the Agreement; or
- 4 As provided in Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 7.3.5 Upon receipt of a Construction Directive, the Contractor shall promptly proceed with the change in the Work involved (or the directed Work) and advise the Architect and the Owner and Blue Star of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.6 A Construction Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.7 If the Contractor does not object in writing to the Owner and Blue Star within fifteen (15) calendar days after receipt of the Construction Directive, such Directive shall be deemed accepted by the Contractor and shall be effective and recorded as a Change Order. If the Contractor disagrees with the method for adjustment in the Contract Sum and timely and properly objects, the method and the adjustment shall be determined on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, subject to such provisions for adjustments to the Contract Sum as provided in the Contract Documents and as further limited immediately below, including, in case of an increase in the Contract Sum, with the applicable mark-up as may be authorized in the Agreement. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following and shall be subject to such terms and conditions regarding **Change Order Pricing** as may be provided in the Agreement (which terms and conditions shall control over the provisions hereof, to the extent in conflict):

- 1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement, and workers' compensation insurance, or, with regard to Contractor's benefits costs, such labor burden as may be expressly recoverable under the Agreement in lieu thereof;
- 2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- 3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;

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- 4 Costs of additional premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- 5 Additional costs of supervision and field office personnel directly attributable to the change.

§ 7.3.8 Except as otherwise provided in the Agreement, the amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost (computed in accordance with any applicable requirements for Change Order Pricing). When both additions and credits covering related Work or substitutions are involved in a change, the allowance for profit (Fee) shall be figured on the basis of net change in the Contract Sum, if any, with respect to that change, to the extent such change in Fee is authorized by the Agreement.

§ 7.3.9 Pending final determination of the total cost of a Construction Directive to the Owner (or a determination of the Contractor's entitlement to compensation for disputed Work), the Contractor may request payment for Work completed under the Construction Directive in Applications for Payment. The Owner will make an interim good faith determination for purposes of monthly certification for payment for those costs. The Owner's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order. Change Orders may be issued for all or any part of a Construction Directive.

§ 7.4 MINOR CHANGES IN THE WORK

The Owner will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work and any Critical Milestones established in the Contract Documents and any requirements relating to the time for Final Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 Final completion is the actual completion of the Work (or applicable portion thereof) in accordance with the Contract Documents, including any Work covered by Change Directives and Change Orders issued under the Contract, other than warranty work on Work that has previously been accepted by the Owner.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 PROGRESS AND COMPLETION

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement (or Amendment to the Agreement which authorizes the Contractor to commence construction of the Work) the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by the Contract Documents or a notice to proceed given by the Owner, the Contractor shall notify the Owner and Blue Star in writing not less than five days or other agreed period before commencing the Work.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

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§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner, Blue Star, or Architect, or of an employee of either, or of a separate contractor or consultant employed by the Owner; or by changes ordered in the Work (not caused or resulting from the failure of Contractor or its Subcontractors or Sub-subcontractors to comply with their obligations arising under the Contract); or by labor disputes (not arising from the labor practices of Contractor or its Subcontractors or Sub-subcontractors); fire (not caused by Contractor or its Subcontractors or Sub-subcontractors); unusual delay in deliveries (not attributable to or caused by Contractor or its Subcontractors or Sub-subcontractors); unavoidable casualties or other causes beyond the control and reasonable ability to avoid by the Contractor or its Subcontractors or Sub-subcontractors (such causes are collectively referred to in the Contract Documents as causes "not the fault of the Contractor"); then the Contract Time shall be extended by Change Order by the number of days by which the critical path to completion of the Project has been delayed by the event giving rise to the right to an extension. Notwithstanding the foregoing, the Contractor acknowledges and agrees that adjustments in the Contract Time will be permitted for a delay only to the extent such delay to the Critical Path (1) is not caused, or could not have been reasonably anticipated and mitigated, by the Contractor, (2) could not be limited or avoided by the Contractor's timely notice to the Owner of the delay, and (3) is in addition to any time contingency periods set forth in the critical path for completion of the Work.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 Nothing herein shall authorize the Contractor to recover an increase in the Contract Sum (i.e., the GMP if the Agreement is a Cost Plus Contract with a GMP) as a result of price escalations in the marketplace or price increases due to labor or materials shortages or to recover such increases in excess of the Contract Sum.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.1 Notwithstanding anything to the contrary contained in the Contract Documents, the Owner may withhold any payment to the Contractor hereunder of and for so long as the Contractor fails to perform any of its obligations hereunder or otherwise is in default under any of the Contract Documents; provided, however, that any such holdback shall be limited to a reasonable amount sufficient, in the good faith opinion of the Owner, to cure any such default or failure to perform by the Contractor. If the Contractor disputes Owner's determination, he shall nevertheless expeditiously continue to prosecute the Work.

§ 9.2 SCHEDULE OF VALUES

Unless the Schedule of Values is attached to the Agreement as an Exhibit, the Contractor shall submit to the Owner and Blue Star, as soon as feasible after full execution of the Agreement and before the first Application for payment, a Schedule of Values fairly allocating the various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as required by the Contract Documents or as otherwise reasonably required by the Owner. The Schedule of Values shall be prepared in such a manner that each major item of work and each subcontracted item of work is shown as a single line item on AIA Document G703, Application and Certificate for Payment, Continuation Sheet or other form acceptable to Owner. Once approved by the Owner and updated for changes in the Work, the Schedule of Values shall be used only as a basis for reviewing the Contractor's Applications for Payment and is not to be taken as evidence of market or other value. The Schedule and any modifications or amendments thereto shall not overvalue early job activities. Except as otherwise agreed in writing by the parties, the Contractor's Reimbursable Conditions Costs and Contractor's Fee shall be included as separate line items. The schedule shall follow the trade divisions of the Specifications so far as practicable. Any modifications or amendments thereto must be approved by the Owner.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 Based upon Applications for Payment submitted to the Owner and the Architect by the Contractor and Certificates for Payment issued by the Architect (if so required by the Owner), the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and in the Agreement.

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§ 9.3.1.1 Without limiting the foregoing, the Contractor shall submit to the Owner and the Architect an itemized Application for Payment prepared in accordance with the Schedule of Values, if required under Section 9.2, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as required by the Agreement or as the Owner may otherwise reasonably require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.2 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Directives, or by interim good faith determinations of the Owner, but not yet included in Change Orders.

§ 9.3.1.3 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay promptly to a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Applications for Payment have been previously submitted and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, Sub-subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work. The Contractor further warrants that it shall acquire no Work, materials, or equipment whether directly or through a Subcontractor or Sub-subcontractor, subject to an agreement under which a lien (other than the mechanic's or contractor's lien arising under Applicable Law) is retained by the seller or otherwise imposed by the Contractor, any Subcontractor or Sub-subcontractor, or any other person or entity. The Contractor shall defend the Owner, at the Contractor's sole cost and expense, against any actions, lawsuits, or proceedings brought against the Owner as a result of liens filed against the site of the Project or otherwise, except to the extent that such liens arise due to the Owner wrongfully withholding payment. The Contractor shall indemnify, defend, and hold harmless the Owner against any such liens or claims for lien and agrees to pay any judgment or lien against the Owner or the Owner's property resulting from any such actions, lawsuits or proceedings brought to enforce any such lien or claim.

§ 9.3.4 With each Application for Payment, and as a condition to such payment by the Owner, Contractor shall submit a lien waiver/release and bills paid affidavit from Contractor and such Subcontractors performing Work during the period covered by the Application for Payment as required by the Agreement.

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 If the Owner requires certification of payment requests by the Architect, the Architect will, within ten (10) days after receipt of the Contractor's Application for Payment (or such longer period as may be required for final payment in the Agreement), either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of

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subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.4.3 The issuance of a Certificate for Payment by the Architect shall constitute a recommendation to the Owner in respect to the amount to be paid. This recommendation is not binding on the Owner if, in Owner's opinion, legitimate reasons for nonpayment exist including, but not limited to the reasons set out in Section 9.5.1. If the Owner declines to make payment upon a Certificate of Payment, the Owner shall promptly notify the Contractor of the reasons therefor.

§ 9.5 DECISIONS TO WITHHOLD PAYMENT

§ 9.5.1 The Architect may withhold a Certificate for Payment and an Owner may withhold payment in whole or in part, to the extent reasonably necessary to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When the above reasons for withholding certification for payment or for payment are removed, payment will be made for amounts previously withheld (although Owner may require Contractor to submit an Application for Payment covering such previously withheld payment).

§ 9.5.3 If the Owner is entitled to withhold payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered.

§ 9.5.4 If Contractor disputes any determination by Owner with regard to all or any part of an Application for Payment or a Certificate of Payment, Contractor shall nevertheless expeditiously continue to prosecute the Work but shall be entitled to make a Claim as provided in Article 15.

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 The Owner shall make payment in the manner and within the time provided in the Contract Documents.

§ 9.6.2 Consistent with Section 12.1.8.1, the Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

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§ 9.6.3 The Contractor hereby authorizes the Owner, on request by a Subcontractor or Sub-subcontractor, to furnish to such Subcontractor or Sub-subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Owner on account of portions of the Work done by such Subcontractor or Sub-subcontractor.

§ 9.6.4 The Owner and Blue Star have the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. Without limiting the foregoing, the Owner and Blue Star shall have the right to contact Subcontractors and Sub-subcontractors, including material and equipment suppliers, to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor or Sub-subcontractor, except as may otherwise be required by law.

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.7 FAILURE OF PAYMENT

§ 9.7.1 If the Owner does not pay the Contractor within ten (10) days after the date established in the Agreement for payment, subject to Owner's right to withhold payment as set out in Subsection 9.5.1 above or awarded by binding dispute resolution, then the Contractor may, after giving written notice to the Owner and Blue Star no less than the minimum number of days as required by Applicable Law and otherwise strictly complying with the requirements of Section 2251.051 of the Texas Government Code, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.7.2 If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, such payment shall be made within thirty (30) days of written demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due the Owner, or the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, the Owner shall have an absolute right to offset such amount against the Contract Sum and may, in the Owner's sole discretion, elect either to: (1) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Contractor from the Owner, or (2) issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 In addition to such other requirements and conditions as set forth in the Agreement, Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize such Work for its intended use; provided, however, as a condition precedent to Substantial Completion, the Owner has received all certificates of occupancy and any other permits, approvals, licenses, and other documents from any governmental authority having jurisdiction thereof necessary for the beneficial occupancy of the Project (or if the same cannot be delivered for reasons not the fault or responsibility of Contractor, nevertheless all Contractor's obligations necessary to the issuance of such certificates, permits, approvals, or licenses will have been performed). In general, the only remaining Work shall be minor in nature, so that the Owner could occupy and utilize the Project on that date and the completion of the Work by the Contractor would not materially interfere or hamper the Owner's normal business operations and the "Substantial Completion List of Deficiencies" (also commonly referred to as the "punchlist") may be completed within the time periods as established in the Agreement, if any, and in no event within a period of time greater than 30 calendar days following the Substantial Completion Date.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect and the Owner and Blue Star a comprehensive list of items to be completed or corrected prior to final payment ("Contractor's Proposed

Substantial Completion List of Deficiencies". Failure to include an item on such List does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's Proposed Substantial Completion List of Deficiencies, the Owner and Blue Star and, upon the Owner's request, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If such inspection discloses any item, whether or not included on the Contractor's List, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Owner or the Architect. In such case, the Contractor shall then submit a request for another inspection by the Owner, Blue Star, and the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, upon request by the Owner, the Contractor will prepare and execute a Certificate of Substantial Completion that shall set out the agreed upon date of Substantial Completion and responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion agreed to by the Owner pursuant to Section 9.8.5.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Architect for its certification of Substantial Completion (if required by the Owner) and to the Owner for its written approval (if the Owner agrees thereto), with a copy to Blue Star. Upon such written approval by the Owner, the Architect (if required by the Owner), and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect and the Owner and Blue Star as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Blue Star, Contractor and Architect (if required by the Owner) shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect (if required by the Owner) and the Owner and Blue Star will promptly make such inspection and, when the Owner finds the Work acceptable under the Contract Documents and the Contract fully performed, the Owner will make the final payment as provided by the Contract Documents. All warranties and guarantees required under or pursuant to the Contract Documents shall be assembled and delivered by the Contractor to the Owner as part of the final Application for Payment. The final payment will not be made by the Owner until all warranties and guarantees have been received and accepted by the Owner.

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§ 9.10.2 Except as otherwise required by the Agreement, neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner and Blue Star, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, and (5) such other data and documentation required by the Agreement establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form acceptable to the Owner.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, the Owner shall, upon application by the Contractor and certification by the Architect (if requested by the Owner), and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Owner prior to payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents;
- .4 matters previously identified by the Owner that remain unsettled at the time of making final payment; or
- .5 any matter which was not known to or reasonably discoverable by the Owner at the time of making final payment.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

§ 9.10.6 Except as otherwise provided in the Agreement, records of reimbursable expenses and costs incurred by the Contractor and for which payment is sought or received from Owner for Work performed or to be performed hereunder on a "time and material" or "cost-plus" basis shall be made available to Owner for its reasonable review and examination. Such records shall be preserved by the Contractor and made available to the Owner for a period of at least three years after final completion of the Work.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

As between the Owner and the Contractor, the Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. Where consideration of labor, equipment or safety is involved, Contractor is solely responsible for all decisions, and Owner shall not incur any liability as a result of Contractor's decisions.

§ 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;

- 2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- 3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with and give notices required by Applicable Law, including all applicable statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ 10.2.4 When use or storage of explosives or other Hazardous Materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall give the Owner and Blue Star reasonable advance notice thereof and shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. When use or storage of explosives or other such hazardous materials or equipment is necessary, the Contractor shall give Owner a written request. No work shall proceed involving such storage or use unless previously approved in writing by the Owner.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner.

§ 10.2.6.1 Without limiting any other requirement hereunder regarding safety, Contractor shall bear responsibility for designing and execution of acceptable trenching and shoring procedures, in accordance with Applicable Law, including Sections 756.021, *et seq.* of the Texas Health and Safety Code.

§ 10.2.7 The Contractor shall not cause or permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

The Contractor shall promptly report in writing to the Owner all accidents arising out of or in connection with the Work which cause death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious property damages are caused, the accident shall be reported immediately by telephone or messenger to the Owner.

§ 10.2.9 The performance of the services by the Contractor set forth in this Article 10 shall not relieve the Subcontractors of their responsibility for the safety of persons and property and for compliance with all federal, state and local statutes, rules, regulations and orders of any governmental authority applicable to the conduct of the Work or the Project.

§ 10.2.10 When all or a portion of the Work is suspended for any reason, the Contractor shall securely fasten down all coverings and protect the Work, as necessary, from injury by any cause.

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding Hazardous Materials.

For purposes of this Section 10.3, the term "Hazardous Materials" shall mean all pollutants, contaminants, chemicals, and any other carcinogenic, ignitable, corrosive, reactive, toxic, or otherwise hazardous substances subject to regulation, control, or remediation under applicable federal, state or local environmental laws or regulations, including without limitation, substances defined as "hazardous wastes," "hazardous substances," "hazardous materials," "toxic substances" or "solid wastes" in the Comprehensive Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 et. Seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 2601, et. Seq.; and any other applicable laws and regulations and all amendments and revisions thereto.

If the Contractor encounters a Hazardous Material not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a Hazardous Material, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner, Blue Star, and Architect in writing.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the Hazardous Material reported by the Contractor and, in the event such Hazardous Material is found to be present, to cause it to be rendered harmless. When the Hazardous Material has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs (as reimbursable under the Contract Documents) of shut-down, delay and start-up.

§ 10.3.3 The Owner shall not be responsible under this Section 10.3 for Hazardous Materials the Contractor brings to the site unless such Hazardous Materials are required by the Contract Documents. The Owner shall be responsible for Hazardous Materials required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such Hazardous Materials.

§ 10.3.4 Contractor agrees that it shall not transport to, use, generate, dispose of, or install at the Project site any Hazardous Materials, except in accordance with Applicable Law. Further, in performing the Work, Contractor shall not cause any release of Hazardous Materials into, or contamination of, the environment, including the soil, the atmosphere, any water course or ground water unless required by the Contract Documents. In the event Contractor engages in any of the activities prohibited in this Section 10.3 or fails to stop work as provided in Section 10.3, to the fullest extent permitted by law, Contractor shall indemnify, defend, and hold harmless the Indemnified Parties and their respective officers, agents, employees, and tenants from and against any and all claims, damages, losses, causes of action, suits and liabilities of every kind, including, but not limited to, expenses of litigation, court costs, punitive damages and attorneys' fees, arising out of, incident to or resulting from the activities prohibited in this Section 10.3 or Contractor's failure to stop work as required.

Contractor shall obtain from manufacturers and furnish to Owner Material Safety Data Sheets (OSHA Form 20) for all Hazardous Materials incorporated into the Project by the Contractor.

§ 10.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7, provided the Contractor shall not be entitled to additional compensation or an extension of time if an emergency is caused by the negligence or failure to fulfill a specific responsibility of the Contractor to the Owner set forth in the Contract Documents or the failure of the Contractor's personnel to supervise adequately the Work of the Subcontractors or suppliers.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as expressly required by the insurance requirements in the Agreement and as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or Sub-subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 and the Agreement shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents. Notwithstanding the foregoing, such coverage required hereunder shall not be written on a claims-made basis without the express written consent of the Owner.

§ 11.1.3 Certificates of insurance acceptable to the Owner and in accordance with the requirements of the Agreement shall be filed with the Owner (with a copy to Blue Star) prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

§ 11.1.4 Without limiting any rights set out in the Agreement, the Owner and the "Indemnified Parties" shall be added as an additional insured on general, auto, umbrella and all other liability policies, including completed operations coverage, required to be carried and maintained hereunder by Contractor excepting workers' compensation/employer's liability. All such liability policies carried and maintained by Contractor must be endorsed to be primary to any liability insurance policies carried by Owner with respect to Contractor's operations hereunder. Waivers of Subrogation shall be provided in favor of Owner and the "Indemnified Parties" on general, auto, workers' compensation/employers, and excess policies carried and maintained by Contractor.

§ 11.1.5 If the Contractor fails to purchase and maintain, or require to be purchased and maintained, any insurance required under this Article 11 or the insurance requirements in the Agreement, Owner may, but shall not be obligated to, upon five (5) days' written notice to the Contractor, purchase such insurance on behalf of the Contractor and shall be entitled to be reimbursed by the Contractor upon demand.

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§ 11.1.6 When any required insurance, due to the attainment of a normal expiration date or renewal date shall expire, the Contractor shall supply the Owner and Blue Star with certificates of insurance and amendatory riders or endorsements that clearly evidence the continuation of all coverage in the same manner, limits of protection, and scope of coverage as was provided by the previous policy. In the event any renewal or replacement policy, for whatever reason obtained or required, is written by a carrier other than that with whom the coverage was previously placed, or the subsequent policy differs in any way from the previous policy, the Contractor shall also furnish the Owner and Blue Star with a certified copy of the renewal or replacement policy unless the Owner provides the Contractor with prior written consent to submit only a Certificate of Insurance for any such policy. All renewal and replacement policies shall be in form and substance satisfactory to the Owner and written by carriers acceptable to the Owner.

§ 11.2 OWNER'S LIABILITY INSURANCE

The Owner shall be responsible for purchasing and maintaining such liability insurance as Owner deems necessary.

§ 11.3 PROPERTY INSURANCE

§ 11.3.1 The party required to furnish Builders Risk Insurance (if any) as set out in the Insurance and Surety Requirements attached to the Agreement and incorporated therein shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, Blue Star, the Contractor, Subcontractors and Sub-subcontractors in the Project.

§ 11.3.1.1 Property insurance (if required by the Contract Documents) shall conform to the requirements set forth in the Insurance and Surety Requirements attached to the Agreement and incorporated therein. In the event that Owner is required to furnish property insurance under this Section 11.3, such property insurance provided by the Owner shall not cover any tools, apparatus, machinery, hoists, and similar items commonly referred to as construction equipment, which may be on the site and the capital value of which is not included in the Work. The Contractor shall make its own arrangements for any insurance it may require on such construction equipment. Any such policy obtained by the Contractor under this Section 11.4 shall include a waiver of subrogation in accordance with the requirements of Section 11.3.7.

§ 11.3.1.2 *[Intentionally deleted.]*

§ 11.3.1.3 Contractor shall be responsible for losses within its deductibles (up to a maximum of \$10,000 per claim) to the extent such loss resulted from the negligence of Contractor or its Subcontractors (of any tier).

§ 11.3.1.4 *[Intentionally deleted.]*

§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 11.3.2 BOILER AND MACHINERY INSURANCE

Unless expressly required by the insurance requirements in the Agreement, the Owner shall not be required to purchase and maintain boiler and machinery insurance.

§ 11.3.3 LOSS OF USE INSURANCE

The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. If the Owner purchases such insurance,

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Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused to the extent (1) of actual recovery of any insurance proceeds under policies obtained pursuant to Section 11.3 and (2) permitted by the applicable policies of insurance.

§ 11.3.4 [Intentionally deleted]

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.3.6 Before an exposure to loss may occur, the party required to furnish the Builders Risk Insurance (if any) under the Insurance and Surety Requirements attached to the Agreement and incorporated therein shall file with the other party a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the other party.

§ 11.3.7 WAIVERS OF SUBROGATION

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, including Blue Star, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent of actual recovery of any insurance proceeds under any property insurance required to be obtained by the Contract Documents, except such rights as they have to proceeds of such insurance held by the Owner in good faith. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.8 Any insured property loss or claim of loss covered by insurance procured by Owner shall be adjusted by the Owner, and any settlement payments shall be made payable to the Owner as trustee for the insured, as their interests may appear, subject to the requirements of any applicable mortgage clause. Upon the occurrence of an insured loss or claim of loss, monies received will be held by Owner who shall make distribution in accordance with an agreement to be reached in such event between Owner and Contractor. If the parties are unable to agree between themselves on the settlement of the loss, such dispute shall be submitted to a court of competent jurisdiction to determine ownership of the disputed amounts, but the Work of the Project shall nevertheless progress during any such period of dispute without prejudice to the rights of any party to the dispute, provided, however, the timing of the lawsuit shall not be governed by the Claims provision set out herein. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 The Owner shall deposit in a separate account proceeds so received from the adjustment of a loss, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.3.10 The Owner shall have power to adjust and settle, in good faith, a loss with insurers providing coverage procured by Owner.

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§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 If required by the Contract Documents, the Contractor shall furnish a Performance Bond and a Payment Bond meeting all applicable requirements of state law, written by a surety on bond forms satisfactory to the Owner and, without limitation, complying with the specific requirements stated below and in the Contract Documents. Each bond shall be in a penal sum which is not less than the Contract Sum.

§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's or Owner's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect or Owner, be uncovered for the Architect's or Owner's examination at the Contractor's expense (not chargeable to the Contract Sum) and be replaced without change in the Contract Time or Contract Sum (subject to applicable limitations in the Agreement on reimbursement for Cost of the Work).

§ 12.1.2 If a portion of the Work has been covered that the Architect or Owner has not specifically requested to examine prior to its being covered, the Architect or Owner may request in writing to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs of uncovering shall be at the Contractor's expense (not chargeable to the Contract Sum) and the cost of correction and/or replacement shall be without change in the Contract Time or Contract Sum (subject to applicable limitations in the Agreement on reimbursement for Cost of the Work), unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall promptly correct Work rejected by the Architect or Owner or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be without change in the Contract Time or Contract Sum (subject to applicable limitations in the Agreement on reimbursement for Cost of the Work) to the extent incurred prior to final payment and at the Contractor's expense (not chargeable to the Contract Sum or otherwise reimbursable from Owner) after final payment. If prior to the date of Substantial Completion, the Contractor, a Subcontractor or Sub-subcontractor or anyone for whom either is responsible uses or damages any portion of the Work, including, without limitation, mechanical, electrical, plumbing and other building systems, machinery, equipment or other mechanical device, the Contractor shall cause such item to be restored to "like new" condition at no expense to the Owner.

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work (or any longer period expressly required by the Agreement) or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor an express, written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. If any of the Work is found to be not in accordance with the requirements of the Contract Documents during the required period for correction of the Work and if the Owner fails promptly thereafter to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the right to require correction by the Contractor except when emergency repairs are necessary to prevent further damage to the Work or damages to the Owner. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4. Nothing herein shall be construed to

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negate or limit Contractor's obligations set forth in Section 3.18 above, including without limitation Contractor's duties to defend and indemnify the Indemnified Parties.

§ 12.2.2.2 Contractor shall maintain a complete and accurate schedule of the dates upon which the corrective periods or express warranties will expire. Contractor agrees to provide notice of the warranty expiration date to Owner, Blue Star, and Architect at least one (1) month prior to the expiration of each such applicable corrective / warranty period. Prior to termination of the one year corrective / warranty period required in Section 12.2.2.1 above, Contractor shall accompany the Owner and Blue Star and the Architect (if requested by Owner) on re-inspection of the improvements or building(s) covered thereby and shall be responsible for correcting any reasonable additional deficiencies not caused by the Owner or by the use of the respective improvements or building which are observed or reported during the re-inspection. For extended warranties expressly required by the Contract Documents (i.e., roofing, compressors, mechanical equipment), Owner will notify the Contractor of deficiencies and Contractor shall start remedying these defects within five (5) days of initial notification from Owner. Contractor shall prosecute the work without interruption until accepted by the Owner and the Architect (if retained by the Owner for such purpose), even though such prosecution should extend beyond the limit of the warranty period. If Contractor fails to provide notice of the expiration of the one (1) year corrective / warranty period at least one (1) month prior to the expiration date, Contractor's correction / warranty obligations described in this paragraph shall continue until such inspection is conducted and any deficiencies found in the inspection corrected.

§ 12.2.2.3 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work. Any corrective work performed or to be performed under or pursuant to Section 12.2.2 shall be warranted to the same extent as the Work is warranted hereunder for the greater of the remainder of the applicable warranty period or ninety (90) days from the date such corrective work has been completed.

§ 12.2.2.4 If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Paragraph 2.4. If the Contractor does not proceed with correction of such nonconforming Work, Owner may remove such nonconforming Work and store the salvageable materials or equipment and charge the cost thereof to the Contractor. If the Contractor does not pay costs of such removal and storage within ten (10) days after written notice, Owner may upon ten (10) additional days written notice sell such materials and equipment at auction or at private sale, and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the Architect's services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, the Contract Sum shall be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, Contractor shall pay the difference to the Owner.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the required period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the nonconforming or defective Work that was discovered or reasonably discoverable during the one year corrective period established herein.

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

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ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located.

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Contractor shall not assign the Contract as a whole without written consent of the Owner, nor shall Contractor assign any monies due or to become due to it hereunder without the written consent of the Owner. If Contractor attempts to make such an assignment without such consent, such purported assignment shall constitute a material breach of the Contract. Notwithstanding the foregoing, Contractor shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 Without limiting the foregoing, Contractor acknowledges and agrees that Owner may, without consent of the Contractor, assign the Contract to Owner's Lender providing construction financing for the Project (if any), if the lender assumes the Owner's rights and obligations under the Contract Documents with regard to the Work to be performed after such assignment. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 13.2.3 If the Owner leases, sells or conveys all or any portion of the real property on which the improvements were constructed under the Contract Documents to another person or entity, any rights with respect to the property so leased, sold or conveyed which the Owner may have against the Contractor under Section 3.5 or Article 12 or by virtue of claims or rights which are reserved to the Owner after the making and acceptance of final payment or that arise from such provisions that survive completion or termination of the Contract, shall automatically transfer to such person or entity, subject to any defenses which the Contractor may have against the Owner. Nothing herein shall be construed to negate or limit Contractor's obligations set forth in Section 3.18 above, including without limitation Contractor's duties to defend and indemnify the Indemnified Parties.

§ 13.3 WRITTEN NOTICE

Except as expressly provided to the contrary in the Agreement, written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 13.4.2 Except as expressly provided in the Contract Documents, no action or failure to act by the Owner, Blue Star, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by Applicable Law, including all applicable statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect, Blue Star, and Owner timely notice of when and where tests and inspections are to be made so that the Architect and the Owner may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or Applicable Law prohibit the Owner from delegating their cost to the Contractor.

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§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Owner will instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect, Blue Star, and the Owner of when and where tests and inspections are to be made so that the Architect and the Owner may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense. The Contractor also agrees that the cost of testing services required for the convenience of the Contractor in his scheduling and performance of the Work, and the cost of testing services related to remedial operations performed to correct deficiencies in the Work shall be borne by the Contractor.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect and the Owner and Blue Star.

§ 13.5.5 If the Architect or the Owner are to observe tests, inspections or approvals required by the Contract Documents, the Architect and/or the Owner will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.6 INTEREST

[See applicable terms, if any, in Agreement.]

§ 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by Applicable Law.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons, subject to the requirements and provisions of Section 14.1.3 below:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 The Contractor is entitled to and has suspended performance in accordance with Section 9.7 above; or
- .4 The Owner has failed to furnish to the Contractor, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less, subject to the requirements and provisions of Section 14.1.3 below.

§ 14.1.3 If the Work has been suspended or delayed for one of the reasons described in Section 14.1.1 or 14.1.2 for a period of at least 30 consecutive days, the Contractor may, upon ten (10) days' additional written notice to the

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Owner, Blue Star, and Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.5, but only if the basis for the suspension, delay or interruption has not been removed or cured within such additional ten (10) day period after giving notice of intent to terminate.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has otherwise repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work (other than Owner's failure to make payment under Article 9 above), the Contractor may, upon ten (10) additional days' written notice to the Owner, Blue Star, and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.5, but only if the basis for such termination has not been removed or cured prior to the effective date of termination.

§ 14.1.5 In the event of a termination by Contractor under this Section 14.1, Contractor shall recover from the Owner only such amount that would be recoverable from the Owner in the event of the Owner's termination for convenience under Subsection 14.4.3 below.

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if

- .1 the Contractor repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 the Contractor fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 the Contractor repeatedly disregards Applicable Law, including all applicable statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
- .4 the Contractor is otherwise guilty of substantial breach of a provision of the Contract Documents;
- .5 the Contractor becomes insolvent, or makes a transfer in fraud of creditors, or makes an assignment for the benefit of creditors;
- .6 the Contractor files or has filed against it a petition under any chapter or section of the United States Bankruptcy Code, as amended, or under any similar law or statute of the United States or any state thereof, or shall be adjudged bankrupt or insolvent in any legal proceeding; or a receiver or trustee is appointed for all or a significant portion of the assets of Contractor;
- .7 the Contractor actually or constructively abandons, or puts Owner on actual or constructive notice that it intends to abandon, the Project; or
- .8 the progress of construction is such that Owner reasonably believes that the Contractor shall not be able to achieve Substantial Completion within thirty (30) days following the Date of Substantial Completion required by the Agreement and Contractor has not delivered and implemented a recovery plan as required under the Agreement or has not recovered the schedule sufficient to meet the respective Contract Time requirements within thirty days after written notice to Contractor by Owner. Without limiting the foregoing, Owner shall be deemed to have a reasonable belief that the Contractor shall not be able to achieve Substantial Completion by the date required pursuant to the preceding sentence if the Contractor shall fail to achieve a Critical Milestone (as defined in the Agreement) within thirty (30) days of the date for such Critical Milestone as set forth in the Schedule of the Work.

§ 14.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

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§ 14.2.3 After any termination of this Contract by Owner pursuant to this Subsection 14.2, Contractor shall not be entitled to any further payment except to the extent of any amount by which Work completed or installed by Contractor prior to such termination and not previously paid for by Owner exceeds the amount due by Contractor to Owner under this Section 14.2 (including all damages which Owner would be entitled to recover at law from Contractor by reason of Contractor's breach), and even then only at such time as the Work is finally completed. It is expressly agreed that pursuit by Owner of any one or more of the remedies provided herein or otherwise available at law or in equity shall not constitute an election of remedies by Owner, nor shall forbearance by Owner to enforce one or more of the remedies provided herein upon an event of default by Contractor be deemed or construed to constitute a waiver of such default.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. This obligation for payment shall survive termination of the Contract.

§ 14.2.5 It is recognized that: (1) if an order for relief is entered on behalf of the Contractor pursuant to Title 11 of the United States Bankruptcy Code, (2) if any other similar order is entered under any other debtor relief laws, (3) if Contractor makes a general assignment for the benefit of its creditors, (4) if a receiver is appointed for the benefit of its creditors, or (5) if a receiver is appointed on account of its insolvency, any such event could impair or frustrate Contractor's performance of the Contract Documents. Accordingly, it is agreed that upon the occurrence of any such event, Owner shall be entitled to request of the Contractor or its successor interest adequate assurance of future performance in accordance with the terms and conditions of the Contract Documents. Failure to comply with such request within ten (10) days of delivery of the request shall entitle Owner to terminate the Contract and shall entitle the Owner to the accompanying rights set forth above in Subsections 14.2.1 through 14.2.4 hereof. In all events pending receipt of adequate assurance of performance and actual performance in accordance therewith, Owner shall be entitled to proceed with the Work with its own forces or with other contractors on a time and material or other appropriate basis, the cost of which will be backcharged against the Contract Sum.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit only as expressly authorized by the Agreement. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In the event of a termination under Section 14.4, Contractor shall, as Contractor's sole and exclusive remedy, be paid for (i) the Work properly executed in accordance with the Contract Documents prior to the effective date of termination, as measured by the Contract Sum, and (ii) the direct, actual, and unavoidable (by exercising

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reasonable care) costs incurred by Contractor in terminating the Work, including the cost of canceling subcontracts and purchase orders not assumed by Owner and other such out-of-pocket costs incurred by Contractor to third parties with respect to termination of this Contract. Owner shall not be responsible for damages other than those expressly provided in this subsection and specifically shall not be responsible for any lost profits or reimbursement for overhead on the Work not performed. The amounts owing by Owner to Contractor pursuant to this Subsection shall be as specified in Contractor's final Application for Payment approved by Owner. In addition to payment for the Work performed prior to the effective date of termination and for any Work performed following the date of termination pursuant to Owner's written request, Contractor shall be entitled to payment for materials timely fabricated off the Project site and delivered and stored in accordance with the Owner's instructions.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

For purposes of Section 15.1, a Claim is a demand or assertion by the Contractor seeking from the Owner, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question which the Contractor may have or assert against the Owner arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 15.1.2 NOTICE OF CLAIMS

Claims by the Contractor must be initiated by written notice (the "Notice of Potential Claim") to the Owner and Blue Star within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the Contractor first recognizes the condition giving rise to the Claim, whichever is later; provided, however, that the Contractor shall use its best efforts to furnish the Owner and Blue Star, as expeditiously as possible, with notice of any Claim including, without limitation, those in connection with concealed or unknown conditions, once such Claim is recognized, and shall cooperate with the Owner and Blue Star in any effort to mitigate the alleged or potential damages, delay or other adverse consequences arising out of the condition which is the cause of such a Claim. The Notice of Potential Claim shall clearly set out the specific matter of complaint, and the impact or damages which may occur or have occurred as a result thereof, to the extent the impact or damages can be assessed at the time of the Notice. If the impact or damages cannot be assessed as of the date of the Notice, the Notice shall be amended at the earliest date this is reasonably possible. Any Claim or portion of a Claim that has not been made the specific subject of a Notice strictly in accordance with the requirements of this Article shall be waived. The parties acknowledge that it is imperative that the Owner and Blue Star have timely, specific notice of any potential problem in order that the problem can be mitigated promptly and economically.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum (and such increase is recoverable under the Contract Documents), written notice as provided herein shall be given before proceeding to execute the Work. Without limiting the requirements of Section 15.1.2, such notice shall include, to the extent then-known by the Contractor, full details and substantiating data to permit evaluation by Owner, Blue Star, and the Architect. If further or other information subsequently becomes known to the Contractor, it shall be promptly furnished to the Owner, Blue Star, and Architect in writing. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.4.1 Except as otherwise provided in the Agreement, in calculating the amount of any Claim recoverable by the Contractor, the following standards will apply:

- .1 No indirect or consequential damages will be allowed.
- .2 No recovery shall be based on a comparison of planned expenditures to total actual expenditures, or on estimated losses of labor efficiency, or on a comparison of planned manloading to actual manloading, or any other analysis that is used to show damages indirectly.
- .3 Damages are limited to extra costs specifically shown to have been directly caused by a proven wrong.

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- .4 No damages will be allowed for home office overhead or other home office charges or any Eichlay formula calculation.
- .5 No profit will be allowed on any damage claim, except as expressly recoverable under the Agreement.

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided in Section 15.1.2 above (the Notice) shall be given. The Contractor's Notice shall include an estimate of cost (to the extent recoverable under the Contract Documents) and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary; provided, however, that the Contractor shall provide to the Owner, Blue Star, and Architect, promptly upon request, additional information regarding the status of such delay. Any change in the Contract Time resulting from such Claim shall be authorized by a Change Order in accordance with the provisions of Section 7.2. In any claim by Contractor for any increase in the Contract Time or the Contract Sum, if permitted in the Contract Documents, Contractor shall demonstrate that the event giving rise to the claim was beyond the Contractor's control and would not have been avoided by an experienced, competent Contractor under similar circumstances and that Contractor has provided Owner and Blue Star with such notice as required herein and has cooperated with Owner to make reasonable efforts to mitigate any delay.

§ 15.1.5.2 Consistent with the requirements of section 8.3, if adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by reasonable, reliable data substantiating that weather conditions were abnormal for the period of time and resulted in delays to the Critical Path in excess of such days as set forth in the Project Schedule.

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES [Intentionally deleted See Sec. 15.1.4.1.1 above.]

§ 15.2 INITIAL DECISION

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision only if the parties agree to the appointment of an Initial Decision Maker. If the parties agree to the appointment of an Initial Decision Maker, and except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation or litigation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 If the parties agree to the appointment of an Initial Decision Maker, the Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party.

§ 15.2.4 If the parties agree to the appointment of an Initial Decision Maker and the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Guaranteed Maximum Price or Contract Time or both.

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§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.3 MEDIATION

[Intentionally deleted. See Sec. 9.1 of the Agreement.]

§ 15.4 ARBITRATION

[Intentionally deleted. See Sec. 9.1.3 of the Agreement.]

* * * * *

These General Conditions of the Contract for the construction of the Project are entered into as of the effective date of the Agreement.

OWNER:

By: _____

Name: _____

Title: _____

CONTRACTOR [CONSTRUCTION MANAGER]:

By: _____

Name: _____

Title: _____

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